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# **Illinois Pattern Jury Instructions — Criminal**

Volume 2

Special Supreme Court Committee on  
Pattern Jury Instructions—Criminal

**2022-2023 EDITION**



LexisNexis





# Illinois Pattern Jury Instructions—Criminal

## Volume 2

Special Supreme Court Committee on Pattern Jury Instructions-Criminal



LexisNexis®

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# Volume 2 Table of Contents

## **Chapter 17.00 CANNABIS AND CONTROLLED SUBSTANCES**

17.01	Definition Of Possession Of Cannabis
17.02	Issues In Possession Of Cannabis
17.03	Definition Of Subsequent Offense Of Possession Of Cannabis
17.04	Issues In Subsequent Offense Of Possession Of Cannabis
17.05	Definition Of Manufacture Or Delivery Of Cannabis
17.05A	Definition Of Deliver
17.06	Issues In Manufacture Or Delivery Of Cannabis
17.07	Definition Of Cannabis Trafficking
17.08	Issues In Cannabis Trafficking
17.09	Definition Of Delivery Of Cannabis—Enhancing Factors Based Upon Age
17.10	Issues In Delivery Of Cannabis—Enhancing Factors Based Upon Age
17.11	Definition Of Production Or Possession Of Cannabis Sativa Plant
17.12	Issues In Production Or Possession Of Cannabis Sativa Plant
17.13	Definition Of Calculated Criminal Cannabis Conspiracy
17.13A	Agreement Implied From Conduct
17.14	Issues In Calculated Criminal Cannabis Conspiracy
17.15	Definition Of Subsequent Offense Of Calculated Criminal Cannabis Conspiracy
17.16	Issues In Subsequent Offense Of Calculated Criminal Cannabis Conspiracy
17.17	Definition Of Manufacture Or Delivery Of Controlled Or Counterfeit Substance
17.18	Issues In Manufacture Or Delivery Of Controlled Or Counterfeit Substance
17.19	Definition Of Manufacture Of, Delivery Of, Or Possession With Intent To Manufacture Or Deliver A Controlled Or Counterfeit Substance—Enhancing Factors Based Upon Location
17.20	Issues In Manufacture Of, Delivery Of, Or Possession With Intent To Manufacture Or Deliver A Controlled Or Counterfeit Substance—Enhancing Factors Based Upon Location
17.21	Definition Of Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Age
17.22	Issues In Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Age
17.23	Definition Of Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Use Of Youths In Commission Of Offense



---

## *Volume 2 Table of Contents*

17.24	Issues In Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Use Of Youths In Commission Of Offense
17.25	Definition Of Delivery Of Controlled Substance—Enhancing Factors Based Upon Pregnant Woman Recipient
17.26	Issues In Delivery Of Controlled Substance—Enhancing Factors Based Upon Pregnant Woman Recipient
17.27	Definition Of Possession Of Controlled Or Counterfeit Substance
17.28	Issues In Possession Of Controlled Or Counterfeit Substance
17.29	Definition Of Calculated Criminal Drug Conspiracy
17.30	Issues In Calculated Criminal Drug Conspiracy
17.31	Definition Of Criminal Drug Conspiracy
17.32	Issues In Criminal Drug Conspiracy
17.33	Definition Of Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance
17.33A	Definition Of Counterfeit Substance
17.33B	Definition Of Look-Alike Substance
17.34	Issues In Manufacture, Distribution, Advertisement Of Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance
17.35	Definition Of Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance—Enhancing Factors Based Upon Location
17.36	Issues In Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance—Enhancing Factors Based Upon Location
17.37	Definition Of Possession Of Hypodermic Syringe Or Needle
17.38	Issues In Possession Of Hypodermic Syringe Or Needle
17.39	Definition Of Delivery, Sale, Or Exchange Of Hypodermic Syringe Or Needle
17.40	Issues In Delivery, Sale, Or Exchange Of Hypodermic Syringe Or Needle
17.41	Definition Of Permitting Unlawful Use Of A Building
17.41A	Definition Of Use Of A Dangerous Place For The Commission Of A Controlled Substance Or Cannabis Offense
17.42	Issues In Permitting Unlawful Use Of A Building
17.42A	Issues In Use Of A Dangerous Place For The Commission Of A Controlled Substance Or Cannabis Offense
17.43	Definition Of Money Laundering
17.43A	Definition Of Financial Transaction
17.43B	Definition Of Financial Institution
17.43C	Definition Of Monetary Instrument
17.43D	Definition Of Criminally Derived Property
17.43E	Definition Of Place



---

## Volume 2 Table of Contents

17.43F	Inferences On Intended Use Of A Place
17.44	Issues In Money Laundering
17.45	Definition Of Controlled Substances Trafficking
17.46	Issues In Controlled Substances Trafficking
17.47	Definition Of Controlled Substances Trafficking—Use Of A Cellular Radio Telecommunications Device
17.48	Issues In Controlled Substances Trafficking—Use Of A Cellular Radio Telecommunications Device
17.49	Definition Of Unlawful Transfer Of A Telecommunications Device To A Minor
17.49A	Definition Of Telecommunications Device
17.50	Issues In Unlawful Transfer Of A Telecommunications Device To A Minor
17.51–17.56	Reserved
17.57	Definition Of Sale Of Drug Paraphernalia
17.57A	Definition Of Drug Paraphernalia
17.58	Issues In Sale Of Drug Paraphernalia
17.59	Definition Of Sale Of Drug Paraphernalia To A Person Under 18 Years Of Age
17.60	Issues In Sale Of Drug Paraphernalia To A Person Under 18 Years Of Age
17.61	Definition Of Sale Of Drug Paraphernalia To A Pregnant Woman
17.62	Issues In Sale Of Drug Paraphernalia To A Pregnant Woman
17.63	Definition Of Manufacture Or Delivery Of Cannabis—Enhancing Factor Based On Location On School Grounds
17.64	Issues In Manufacture Or Delivery Of Cannabis—Enhancing Factor Based On Location On School Grounds
17.65	Definition Of Possession Of Drug Paraphernalia
17.65A	Definition Of Inference Of Legitimacy—Possession Or Sale Of Drug Paraphernalia
17.66	Issues In Possession Of Drug Paraphernalia
17.67	Definition Of Streetgang Criminal Drug Conspiracy
17.67A	Definition Of Organized Gang
17.68	Issues In Streetgang Criminal Drug Conspiracy

---

## Chapter 18.00 WEAPONS

---

18.01	Definition Of Unlawful Use Of Weapons
18.01A	Exemptions To Weapons Offenses
18.02	Issues In Unlawful Use Of Weapons
18.03	Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Silencer—Enhancing Factor Based Upon Location
18.03U	Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Bludgeon, Sling-Shot, Metal Knuckles, Throwing Star, Switchblade, Or



---

## Volume 2 Table of Contents

	Ballistic Knife—Enhancing Factor Based Upon Location
18.03V	Definition Of Aggravated Unlawful Use Of Weapons—Carrying Tear Gas Or Noxious Liquid Gas—Enhancing Factor Based Upon Location
18.03W	Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Concealed Weapon—Enhancing Factor Based Upon Location
18.03X	Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Rifle, Shotgun, Or Bomb—Enhancing Factor Based Upon Location
18.03XX	Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Machine Gun—Enhancing Factors
18.03Y	Definition Of Aggravated Unlawful Use Of Weapons—Concealing One's Identity—Enhancing Factor Based Upon Location
18.03Z	Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Weapon On A Public Way Or Land Within City Limits—Enhancing Factor Based Upon Location
18.04	Issues In Aggravated Unlawful Use Of Weapons—Possessing A Silencer—Enhancing Factor Based Upon Location
18.04U	Issues In Aggravated Unlawful Use Of Weapons—Possessing A Bludgeon, Sling-Shot, Metal Knuckles, Throwing Star, Switchblade, Or Ballistic Knife—Enhancing Factor Based Upon Location
18.04V	Issues In Aggravated Unlawful Use Of Weapons—Carrying Tear Gas Or Noxious Liquid Gas—Enhancing Factor Based Upon Location
18.04W	Issues In Aggravated Unlawful Use Of Weapons—Possessing A Concealed Weapon—Enhancing Factor Based Upon Location
18.04X	Issues In Aggravated Unlawful Use Of Weapons—Possessing A Rifle, Shotgun, Or Bomb—Enhancing Factor Based Upon Location
18.04XX	Issues In Aggravated Unlawful Use Of Weapons—Possessing A Machine Gun—Enhancing Factors
18.04Y	Issues In Aggravated Unlawful Use Of Weapons—Concealing One's Identity—Enhancing Factor Based Upon Location
18.04Z	Issues In Aggravated Unlawful Use Of Weapons—Possessing A Weapon On A Public Way Or Land Within City Limits—Enhancing Factor Based Upon Location
18.05	Definition Of Subsequent Offense Of Unlawful Use Of Weapons
18.06	Issues In Subsequent Offense Of Unlawful Use Of Weapons
18.07	Definition Of Unlawful Possession Of A Weapon By A Felon
18.07A	Definition Of Firearm—Unlawful Possession Of A Weapon By A Felon
18.08	Issues In Unlawful Possession Of A Weapon By A Felon
18.09	Definition Of Unlawful Possession Of A Weapon By A Person In The Custody Of The Department Of Corrections Facilities
18.10	Issues In Unlawful Possession Of A Weapon By A Person In The Custody Of The Department Of Corrections Facilities
18.11	Definition Of Aggravated Discharge Of A Firearm—Discharge At A Person, Vehicle, Or Building



---

## Volume 2 Table of Contents

18.12	Issues In Aggravated Discharge Of A Firearm—Discharge At A Person, Vehicle, Or Building
18.13	Definition Of Aggravated Discharge Of A Firearm—Enhancing Factor Based On Status Of Victim
18.14	Issues In Aggravated Discharge Of A Firearm—Enhancing Factor Based On Status Of Victim
18.15	Definition Of Unlawful Sale Or Delivery Of Firearms
18.15X	Definition Of Aggravated Unlawful Sale Of Firearms—Enhancing Factor Based Upon Location
18.16	Issues In Unlawful Sale Or Delivery Of Firearms
18.16X	Issues In Aggravated Unlawful Sale Of Firearms—Enhancing Factor Based Upon Location
18.17	Definition Of Unlawful Possession Of Firearms And Firearm Ammunition
18.18	Issues In Unlawful Possession Of Firearms And Firearm Ammunition
18.19	Definition Of Unlawful Sale Or Delivery Of Firearms On School Or Public Housing Premises
18.20	Issues In Unlawful Sale Or Delivery Of Firearms On School Or Public Housing Premises
18.21	Definition Of Failure To Keep A Register Of Firearm Sales By Dealer
18.22	Issues In Failure To Keep A Register Of Firearm Sales By Dealer
18.23	Definition Of Defacing The Identification Marks Of Firearms
18.24	Issues In Defacing The Identification Marks Of Firearms
18.24A	Interference Arising From Possession Of Altered Firearms
18.25	Definition Of Failure To Possess A Firearm Owner's Identification Card
18.26	Issues In Failure To Possess A Firearm Owner's Identification Card
18.27	Definition Of Unlawful Use Of Metal Piercing Bullets
18.28	Issues In Unlawful Use Of Metal Piercing Bullets
18.29	Definition Of Manufacture, Sale, Or Transfer Of Bullets Represented To Be Metal Piercing Bullets
18.30	Issues In Manufacture, Sale, Or Transfer Of Bullets Represented To Be Metal Piercing Bullets
18.31	Definition Of Unlawful Discharge Of Metal Piercing Bullets
18.32	Issues In Unlawful Discharge Of Metal Piercing Bullets
18.33	Definition Of Unlawful Possession Of A Concealed Metal Piercing Bullet And Firearm
18.34	Issues In Unlawful Possession Of A Concealed Metal Piercing Bullet And Firearm
18.35	Definition Of Ballistic Knife
18.35A	Definition Of Switchblade Knife
18.35B	Definition Of Explosive Bullet
18.35C	Definition Of Cartridge
18.35D	Definition Of Machine Gun



---

## Volume 2 Table of Contents

18.35E	Definition Of Stun Gun Or Taser
18.35F	Definition Of School—Weapons
18.35G	Definition Of Firearm
18.35H	Definition Of Metal Piercing Bullet
18.35I	Definition Of Handgun
18.35J	Definition Of Courthouse—Weapons
18.35K	Definition Of Mental Institution
18.35L	Definition Of Patient In A Mental Institution
18.35M	Definition Of Person Engaged In The Business
18.35N	Definition Of With The Principal Objective Of Livelihood And Profit
18.35O	Definition Of School
18.35P	Definition Of School Related Activity
18.37	Definition Of Unlawful Discharge Of A Firearm—Discharge In A Cemetery
18.38	Issues In Unlawful Discharge Of A Firearm—Discharge In A Cemetery
18.39	Definition Of Unlawful Sale Of Firearms By Liquor Licensee
18.40	Issues In Unlawful Sale Of Firearms By Liquor Licensee
18.41	Definition Of Reckless Discharge Of A Firearm
18.42	Issues In Reckless Discharge Of A Firearm
18.43	Definition Of Gunrunning
18.44	Issues In Gunrunning

---

### Chapter 19.00 MOB ACTION

---

19.01	Definition Of Mob Action—Unlawful Assembly
19.02	Issues In Mob Action—Unlawful Assembly
19.03	Definition Of Mob Action—Violent Infliction Of Injury
19.04	Issues In Mob Action—Violent Infliction Of Injury
19.05	Definition Of Mob Action—Failure To Withdraw
19.06	Issues In Mob Action—Failure To Withdraw
19.07	Definition Of Disorderly Conduct
19.08	Issues In Disorderly Conduct
19.09	Definition Of Harassment By Telephone
19.10	Issues In Harassment By Telephone
19.11	Definition Of Residential Picketing
19.12	Issues In Residential Picketing

---

### Chapter 20.00 GAMBLING

---

20.01	Definition Of Gambling
20.01A	Definition Of A Gambling Device
20.01B	Definition Of Lottery
20.01C	Definition Of Policy Game

---

## *Volume 2 Table of Contents*

20.02	Issues In Gambling
20.03	Definition Of Keeping A Gambling Place
20.04	Issues In Keeping A Gambling Place
20.05	Definition Of Syndicated Gambling—Policy
20.06	Issues In Syndicated Gambling—Policy
20.07	Definition Of Syndicated Gambling—Bookmaking
20.08	Issues In Syndicated Gambling—Bookmaking

---

### **Chapter 21.00      BRIBERY**

---

21.01	Definition Of Offering A Bribe—Athletic Contest
21.02	Issues In Offering A Bribe—Athletic Contest
21.03	Definition Of Accepting A Bribe—Athletic Contest
21.04	Issues In Accepting A Bribe—Athletic Contest
21.05	Definition Of Failure To Report Offer Of Bribe—Athletic Contest
21.06	Issues In Failure To Report Offer Of Bribe—Athletic Contest
21.07	Definition Of Offering A Commercial Bribe
21.08	Issues In Offering A Commercial Bribe
21.09	Definition Of Accepting A Commercial Bribe
21.10	Issues In Accepting A Commercial Bribe
21.11	Definition Of Bribery—Official
21.12	Issues In Bribery—Official
21.12A	Issues In Bribery—Belief In Official Status
21.12B	Issues In Bribery—Official—Through An Intermediary
21.12C	Issues In Bribery—Official—Agreement By Intermediary
21.12D	Issues In Bribery—Official—Solicitation By Intermediary
21.13	Definition Of Failure To Report A Bribe—Official
21.14	Issues In Failure To Report A Bribe—Official
21.15	Definition Of Official Misconduct
21.16	Issues In Official Misconduct
21.16A	Enforcement Agency
21.17	Definition Of Offering A Bribe—Attendance At A Particular Institution
21.18	Issues In Offering A Bribe—Attendance At A Particular Institution
21.19	Definition Of Offering A Bribe—Sports Agents
21.20	Issues In Offering A Bribe—Sports Agents

---

### **Chapter 22.00      INTERFERENCE WITH JUDICIAL AND OTHER GOVERNMENTAL FUNCTIONS**

---

22.01	Definition Of Perjury
22.01A	Definition Of Material
22.01B	An Oath Or Affirmation Was Required
22.02	Issues In Perjury



---

## *Volume 2 Table of Contents*

22.03	Definition Of Perjury—Contradictory Statements
22.04	Issues In Perjury—Contradictory Statements
22.05	Definition Of Subornation Of Perjury
22.06	Issues In Subornation Of Perjury
22.07	Definition Of Communicating With A Juror
22.08	Issues In Communicating With A Juror
22.09	Definition Of Communicating With A Witness (Until January 1, 1995)
22.09X	Definition Of Communicating With A Witness (As Of January 1, 1995)
22.10	Issues In Communicating With A Witness (Until January 1, 1995)
22.10X	Issues In Communicating With A Witness (As Of January 1, 1995)
22.11	Definition Of Harassment Of A Juror Or Witness—Communication Producing Mental Anguish Or Emotional Distress (Until January 1, 1995)
22.11X	Definition Of Harassment Of A Juror Or Witness—Conveying A Threat (Until January 1, 1995)
22.11Y	Definition Of Harassment Of A Juror, Witness, Or Family Member Of A Juror Or Witness (As Of January 1, 1995)
22.11Z	Definition Of Family Member
22.11AA	Definition Of Harassment Of A Child Representative Or Family Member Of A Child Representative
22.11BB	Definition Of Representative For The Child
22.12	Issues In Harassment Of A Juror Or Witness—Communication Producing Mental Anguish Or Emotional Distress (Until January 1, 1995)
22.12X	Issues In Harassment Of A Juror Or Witness—Conveying A Threat (Until January 1, 1995)
22.12Y	Issues In Harassment Of A Juror, Witness, Or Family Member Of A Juror Or Witness (As Of January 1, 1995)
22.12AA	Issues In Harassment Of A Child Representative Or Family Member Of A Child Representative
22.13	Definition Of Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Institution Employee
22.13A	Definition Of Correctional Institution Employee
22.13X	Definition Of Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Employee
22.14	Issues In Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Institution Employee
22.14X	Issues In Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Institution Employee Causing Injury
22.15	Definition Of Disarming A Peace Officer
22.16	Issues In Disarming A Peace Officer
22.17	Definition Of Obstructing Service Of Process
22.18	Issues In Obstructing Service Of Process

---

## Volume 2 Table of Contents

22.19	Definition Of Obstructing Justice
22.20	Issues In Obstructing Justice
22.21	Definition Of Obstructing Justice—Flight Of Witness
22.22	Issues In Obstructing Justice—Flight Of Witness
22.23	Definition Of Concealing Or Aiding A Fugitive
22.24	Issues In Concealing Or Aiding A Fugitive
22.25	Definition Of Escape
22.26	Issues In Escape—Penal Institution, Work Release Or Department of Human Services
22.27	Definition Of Escape—In Custody
22.28	Issues In Escape—In Custody
22.29	Definition Of Armed Escape—Penal Institution Or Work Release
22.30	Issues In Armed Escape—Penal Institution Or Work Release
22.31	Definition Of Armed Escape—In Custody
22.32	Issues In Armed Escape—In Custody
22.33	Definition Of Aiding Escape
22.34	Issues In Aiding Escape
22.35	Definition Of Aiding Escape While Armed
22.36	Issues In Aiding Escape While Armed
22.37	Definition Of Aiding Escape—Officer Of A Penal Institution
22.38	Issues In Aiding Escape—Officer Of A Penal Institution
22.39	Definition Of Refusing To Aid An Officer
22.40	Issues In Refusing To Aid An Officer
22.41	Definition Of Compounding A Crime
22.42	Issues In Compounding A Crime
22.43	Definition Of False Personation Of A Judicial Or Governmental Official
22.44	Issue In False Personation Of A Judicial Or Governmental Official
22.45	Definition Of Performance Of An Unauthorized Act
22.46	Issues In Performance Of An Unauthorized Act
22.47	Definition Of Simulating Legal Process
22.48	Issue In Simulating Legal Process
22.49	Definition Of Tampering With Public Records
22.50	Issue In Tampering With Public Records
22.51	Definition Of Tampering With Public Notice
22.52	Issues In Tampering With Public Notice
22.53	Definition Of Violation Of Bail Bond
22.53A	Definition Of Violation Of Bail Bond By Possessing A Firearm
22.54	Issues In Violation Of Bail Bond
22.54A	Issues In Violation Of Bail Bond By Possessing A Firearm
22.55	Definition Of Bringing Contraband Into A Penal Institution
22.56	Issues In Bringing Contraband Into A Penal Institution
22.57	Definition Of Possessing Contraband In A Penal Institution

---

## *Volume 2 Table of Contents*

22.58	Issues In Possessing Contraband In A Penal Institution
22.59	Affirmative Defense To Possessing Contraband In A Penal Institution—Authorized Possession
22.60	Issues In Affirmative Defense To Possessing Contraband In A Penal Institution—Authorized Possession
22.61	Affirmative Defense To Bringing Or Possessing Contraband In A Penal Institution—Possession At Arrest
22.62	Issues In Affirmative Defense To Bringing Or Possessing Contraband In A Penal Institution—Possession At Arrest
22.63	Definition Of Unauthorized Bringing Of Contraband Into A Penal Institution By An Employee
22.64	Issues In Unauthorized Bringing Of Contraband Into A Penal Institution By An Employee
22.65	Definition Of Unauthorized Possession Of Contraband In A Penal Institution By An Employee
22.66	Issues In Unauthorized Possession Of Contraband In A Penal Institution By An Employee
22.67	Definition Of Unauthorized Delivery Of Contraband In A Penal Institution By An Employee
22.68	Issues In Unauthorized Delivery Of Contraband In A Penal Institution By An Employee
22.69	Definition Of Penal Institution
22.69A	Definition Of Employee Of A Penal Institution
22.69B	Definition Of Deliver Or Delivery
22.69C	Definition Of Contraband
22.69D	Definition Of Alcoholic Liquor
22.69E	Definition Of Cannabis
22.69F	Definition Of Controlled Substance
22.69G	Definition Of Weapon
22.69H	Definition Of Firearm
22.69I	Definition Of Firearm Ammunition
22.69J	Definition Of Explosive
22.69K	Definition Of Tool To Defeat Security Mechanisms
22.69L	Definition Of Cutting Tool
22.69M	Definition Of Attempt—Contraband Into A Penal Institution
22.69N	Definition Of Conspiracy—Contraband In A Penal Institution
22.69P	Definition Of Solicitation—Contraband In A Penal Institution
22.70	Definition Of False Personation Of A Peace Officer
22.71	Issue In False Personation Of A Peace Officer
22.72	Definition Of Aggravated False Personation Of A Peace Officer
22.73	Issues In Aggravated False Personation Of A Peace Officer
22.74	Definition Of Violation Of Bail Bond By Possessing A Firearm



---

## *Volume 2 Table of Contents*

22.75	Definition Of Escape-Failure To Comply With A Condition Of Electronic Home Monitoring Detention Program
22.76	Issues In Escape-Failure To Comply With A Condition Of Electronic Home Monitoring Detention Program
22.77	Definition Of Defrauding A Drug And Alcohol Screening Test
22.77A	Definition Of A Drug Or Alcohol Screening Test
22.77B	Inferences In Defrauding A Drug And Alcohol Screening Test
22.78	Issues In Defrauding A Drug And Alcohol Screening Test

---

### **Chapter 23.00    TRAFFIC**

---

23.01	Definition Of Fleeing Or Attempting To Elude A Police Officer
23.02	Issues In Fleeing Or Attempting To Elude A Police Officer
23.03	Definition Of Aggravated Fleeing Or Attempting To Elude A Police Officer—Damage To Property
23.03X	Definition Of Aggravated Fleeing Or Attempting To Elude A Police Officer—Bodily Injury
23.04	Issues In Aggravated Fleeing Or Attempting To Elude A Police Officer
23.04X	Issues In Aggravated Fleeing Or Attempting To Elude A Police Officer—Bodily Injury
23.05	Definition Of Leaving The Scene Of An Accident Involving Death Or Personal Injury
23.06	Issues In Leaving The Scene Of An Accident Involving Death Or Personal Injury
23.07	Definition Of Aggravated Leaving The Scene Of An Accident Involving Death Or Personal Injury
23.08	Issues In Aggravated Leaving The Scene Of An Accident Involving Death Or Personal Injury
23.09	Definition Of Leaving The Scene Of An Accident Involving Damage To A Vehicle
23.10	Issues In Leaving The Scene Of An Accident Involving Damage To A Vehicle
23.11	Definition Of Duty To Give Information Or Render Aid
23.12	Definition Of Personal Injury—Offense Of Leaving The Scene Of An Accident
23.13	Definition Of Driving Under The Influence Of Alcohol
23.14	Issues In Driving Under The Influence Of Alcohol
23.15	Definition Of Driving Under The Influence Of Drugs
23.16	Issues In Driving Under The Influence Of Drugs
23.17	Definition Of Driving Under The Combined Influence Of Alcohol And Drugs
23.18	Issues In Driving Under The Combined Influence Of Alcohol And Drugs
23.19	Definition Of Driving With An Alcohol Concentration Of 0.08 Or More
23.20	Issues In Driving With An Alcohol Concentration Of 0.08 Or More

---

## *Volume 2 Table of Contents*

23.21	Definition Of Driving With A Drug, Substance, Or Compound In Blood Or Urine
23.22	Issues In Driving With A Drug, Substance, Or Compound In Blood Or Urine
23.23–23.24	Reserved
23.25	Definition Of Driving Under The Influence—Felony—Driving An Occupied School Bus As Enhancing Factor
23.26	Issues In Driving Under The Influence—Felony—Driving An Occupied School Bus As Enhancing Factor
23.27	Definition Of Driving Under The Influence—Felony—Accident As Enhancing Factor
23.28	Issues In Driving Under The Influence—Felony—Accident As Enhancing Factor
23.28A	Definition Of Proximate Cause In Aggravated Driving Under The Influence—Accident And Injury As Enhancing Factor
23.29	Definition Of Under The Influence Of Alcohol
23.30	Presumptions On Being Under The Influence Of Alcohol
23.30A	Definition Of Alcohol Concentration
23.30B	Prescription Not A Defense
23.31	Definition Of Reckless Driving
23.31X	Definition Of Aggravated Reckless Driving
23.32	Issue In Reckless Driving
23.32X	Issues In Aggravated Reckless Driving
23.33	Definition Of Drag Racing
23.34	Issues In Drag Racing
23.35	Definition Of Possession Of Stolen Or Converted Vehicle
23.35A	Definition Of Converted
23.35B	Definition Of Essential Parts
23.36	Issues In Possession Of Stolen Or Converted Vehicle
23.36A	Inference From Possession Of Stolen Or Converted Vehicle
23.37	Definition Of Possession Of A Vehicle With An Altered Identification Number
23.37A	Definition Of Identification Number
23.38	Issues In Possession Of A Vehicle With An Altered Identification Number
23.39	Definition Of Driving While Driver’s License Is Suspended Or Revoked
23.40	Issues In Driving While Driver’s License Is Suspended Or Revoked
23.41	Definition Of Subsequent Offense Of Driving While Driver’s License Is Suspended Or Revoked
23.42	Issues In Subsequent Offense Of Driving While Driver’s License Is Suspended Or Revoked
23.43	Definition Of Actual Physical Control
23.43A	Definition Of Vehicle



---

## *Volume 2 Table of Contents*

23.43B	Definition Of Motor Vehicle
23.45	Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus
23.46	Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus
23.47	Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Injuries
23.47A	Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Death
23.48	Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Injuries
23.48A	Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Death
23.49	Definition Of Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus
23.50	Issues In Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus
23.51	Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Injuries
23.51A	Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Death
23.52	Issues In Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Injuries
23.52A	Issues In Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Death
23.53	Definition Of Aggravated Driving Under The Influence Of Drugs—Driving A School Bus
23.54	Issues In Aggravated Driving Under The Influence Of Drugs—Driving A School Bus
23.55	Definition Of Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Injuries
23.55A	Definition Of Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Death
23.56	Issues In Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Injuries
23.56A	Issues In Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Death
23.57	Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving A School Bus
23.58	Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving A School Bus
23.59	Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Injuries
23.59A	Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or

---

## *Volume 2 Table of Contents*

	Compounds—Accident Resulting In Death
23.60	Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Injuries
23.60A	Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds—Accident Resulting In Death
23.61	Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Driving A School Bus
23.62	Issues In Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Driving A School Bus
23.63	Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Accident Resulting In Injuries
23.63A	Definition Of Aggravated Driving With A Drug, Substance, Or Intoxicating Compound In Breath, Blood Or Urine—Accident Resulting In Death
23.64	Issues In Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Accident Resulting In Injuries
23.64A	Issues In Aggravated Driving With A Drug, Substance, Or Intoxicating Compound In Breath, Blood Or Urine—Accident Resulting In Death
23.65	Definition Of Speeding
23.65A	Definition Of Speeding While Passing School
23.65B	Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
23.65C	Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident While Driving In A School Speed Zone As Enhancing Factor
23.65D	Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving Without Liability Insurance
23.65E	Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Defendant Does Not Possess Drivers License
23.65F	Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
23.66	Issues In Speeding
23.66A	Issues In Speeding While Passing School
23.66B	Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Bodily Harm To A Child Under He Age Of 16
23.66C	Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident While Driving In A School Speed Zone As Enhancing Factor
23.66D	Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving Without Liability Insurance



---

## *Volume 2 Table of Contents*

- 23.66E Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Defendant Does Not Possess Drivers License
- 23.66F Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.67 Definition Of Transportation Of Alcoholic Liquor In A Motor Vehicle—Driver
- 23.67B Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
- 23.67C Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.67D Definition Of Aggravated Driving Under The Influence Of Alcohol—Driving Without Liability Insurance
- 23.67E Definition Of Aggravated Driving Under The Influence Of Alcohol—Defendant Does Not Possess Drivers License
- 23.67F Definition Of Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.68 Issues In Transportation Of Alcoholic Liquor In A Motor Vehicle—Driver
- 23.68B Issues In Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
- 23.68C Issues In Aggravated Driving Under The Influence Of Alcohol—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.68D Issues In Aggravated Driving Under The Influence Of Alcohol—Driving Without Liability Insurance
- 23.68E Issues In Aggravated Driving Under The Influence Of Alcohol—Defendant Does Not Possess Drivers License
- 23.68F Issues In Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.69 Definition Of Possession Of Alcoholic Liquor In A Motor Vehicle—Passenger
- 23.69B Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
- 23.69C Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.69D Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Driving Without Liability Insurance

---

## *Volume 2 Table of Contents*

23.69E	Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Defendant Does Not Possess Drivers License
23.69F	Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
23.70	Issues In Possession Of Alcoholic Liquor In A Motor Vehicle—Passenger
23.70B	Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
23.70C	Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Accident While Driving In A School Speed Zone As Enhancing Factor
23.70D	Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Driving Without Liability Insurance
23.70E	Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Defendant Does Not Possess Drivers License
23.70F	Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
23.71	Definition Of Aggravated Possession Of Stolen Or Converted Motor Vehicles
23.71B	Definition Of Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
23.71C	Definition Of Aggravated Driving Under The Influence Of Drugs—Accident While Driving In A School Speed Zone As Enhancing Factor
23.71D	Definition Of Aggravated Driving Under The Influence Of Drugs—Driving Without Liability Insurance
23.71E	Definition Of Aggravated Driving Under The Influence Of Drugs—Defendant Does Not Possess Drivers License
23.71F	Definition Of Aggravated Driving Under The Influence Of Drugs—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
23.72	Issues In Aggravated Possession Of Stolen Or Converted Motor Vehicles
23.72B	Issues In Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
23.72C	Issues In Aggravated Driving Under The Influence Of Drugs—Accident While Driving In A School Speed Zone As An Enhancing Factor
23.72D	Issues In Aggravated Driving Under The Influence Of Drugs—Driving Without Liability Insurance
23.72E	Issues In Aggravated Driving Under The Influence Of Drugs—Defendant Does Not Possess Drivers License



---

## *Volume 2 Table of Contents*

23.72F	Issues In Aggravated Driving Under The Influence Of Drugs—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
23.73	Definition Of Possession Or Use Of Radar Detection Devices
23.73A	Definition Of Equipped—Possession Or Use Of Radar Detection Devices Or Radar Jamming Devices
23.73B	Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
23.73C	Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds—Accident While Driving In A School Speed Zone As Enhancing Factor
23.73D	Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving Without Liability Insurance
23.73E	Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Defendant Does Not Possess Drivers License
23.73F	Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
23.74	Issues In Possession Or Use Of Radar Detection Devices
23.74B	Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
23.74C	Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds—Accident While Driving In A School Speed Zone As Enhancing Factor
23.74D	Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving Without Liability Insurance
23.74E	Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Defendant Does Not Possess Drivers License
23.74F	Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
23.75	Definition Of Possession Or Use Of Radar Jamming Devices
23.75B	Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
23.75C	Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Accident While Driving In A School Speed Zone As Enhancing Factor
23.75D	Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving Without Liability Insurance

---

## Volume 2 Table of Contents

23.75E	Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Defendant Does Not Possess Drivers License
23.75F	Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
23.76	Issues In Possession Or Use Of Radar Jamming Devices
23.76B	Issues In Aggravated Driving With A Drug, Substance Or Compound In Breath, Blood, Or Urine—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
23.76C	Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Accident While Driving In A School Speed Zone As Enhancing Factor
23.76D	Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving Without Liability Insurance
23.76E	Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Defendant Does Not Possess Drivers License
23.76F	Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
23.77	Definition Of Improper Lane Usage
23.78	Issues In Improper Lane Usage
23.79	Definition Of Driving On Approach To An Emergency Vehicle
23.79X	Definition Of Authorized Emergency Vehicle
23.80	Issues In Driving On Approach To An Emergency Vehicle

---

### Chapter 24–25.00 DEFENSES

---

24-25.00	Introduction
24-25.01	Definition Of Insanity
24-25.01A	Issues In Defense Of Insanity
24-25.01B	Guilty But Mentally Ill
24-25.01C	Definition Of Mentally Ill
24-25.01D	Issues In Defense Of Insanity When Jury Is To Be Instructed On Guilty But Mentally Ill Verdict
24-25.01E	Issues In Defense Of Insanity When Jury Is To Be Instructed On Both First Degree Murder And Second Degree Murder (Provocation)—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict
24-25.01F	Issues In Defense Of Insanity When Jury Is To Be Instructed On First And Second Degree Murder (Provocation) And The Guilty But Mentally Ill Verdict
24-25.01G	Issues In Defense Of Insanity When Jury Is To Be Instructed On Both First Degree Murder And Second Degree Murder (Belief In Justification)—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict



---

## Volume 2 Table of Contents

24-25.01H	Issues In Defense Of Insanity When Jury Is To Be Instructed On First And Second Degree Murder (Belief In Justification) And The Guilty But Mentally Ill Verdict
24-25.01I	Issues When Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On The Insanity Defense
24-25.01J	Issues When The Jury Is To Be Instructed On First And Second Degree Murder (Provocation) And The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On The Insanity Defense
24-25.01K	Issues When Jury Is To Be Instructed On First And Second Degree Murder (Belief In Justification) And The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On The Insanity Defense
24-25.02	Definition Of Voluntary Intoxication Or Drugged Condition
24-25.02A	Issue In Defense Of Voluntary Intoxication Or Drugged Condition
24-25.03	Involuntary Intoxication Or Drugged Condition
24-25.03A	Issue In Defense Of Involuntary Intoxication Or Drugged Condition
24-25.04	Definition Of Entrapment
24-25.04A	Issues In Defense Of Entrapment
24-25.05	Alibi
24-25.06	Use Of Force In Defense Of A Person
24-25.06A	Issue In Defense Of Justifiable Use Of Force
24-25.07	Use Of Force In Defense Of Dwelling
24-25.08	Use Of Force In Defense Of Property
24-25.09	Initial Aggressor's Use Of Force
24-25.09X	Non-Initial Aggressor—No Duty To Retreat
24-25.10	Forcible Felon Not Entitled To Use Force
24-25.11	Provocation Of First Force As Excuse For Retaliation
24-25.12	Peace Officer's Use Of Force In Making Arrest
24-25.13	Peace Officer's Use Of Force To Prevent Escape From Custody
24-25.14	Peace Officer's Use Of Force To Prevent Escape From Penal Institution
24-25.15	Definition Of Force Likely To Cause Death Or Great Bodily Harm
24-25.16	Private Person's Use Of Force In Making Arrest—Not Summoned By Peace Officer
24-25.17	Private Person's Use Of Force In Making Arrest—Summoned By Peace Officer
24-25.18	Private Person's Use Of Force To Prevent Escape—Not Summoned By Peace Officer
24-25.19	Private Person's Use Of Force To Prevent Escape—Summoned By Peace Officer
24-25.20	Private Person's Use Of Force In Resisting Arrest
24-25.21	Definition Of Compulsion
24-25.21A	Issue In Defense Of Compulsion
24-25.22	Necessity
24-25.22A	Issue In Defense Of Necessity

---

## *Volume 2 Table of Contents*

24-25.23	Prosecutions Brought Under Exceptions To The Statute Of Limitations Normally Applicable (Before January 1, 2018)
24-25.23A	Issue In Statute Of Limitations Exceptions (Before January 1, 2018)
24-25.23X	Prosecutions Brought Under Exceptions To The Statute Of Limitations Normally Applicable (As Of January 1, 2018)
24-25.23Y	Issue In Statute Of Limitations Exceptions (As Of January 1, 2018)
24-25.24	Definition Of Defense Of Mistake Of Fact
24-25.24A	Issues In Defense Of Mistake Of Fact
24-25.25	Defense To Home Invasion
24-25.25A	Issue In Defense To Home Invasion
24-25.26	Exemption To Perjury—Contradictory Statements
24-25.27	Defense To Criminal Damage To Property And Arson
24-25.27A	Issues In Defense To Criminal Damage To Property And Arson

---

### **Chapter 26.00      CONCLUDING INSTRUCTIONS AND FORMS OF VERDICTS**

---

#### **PART I.   GENERAL CONCLUDING INSTRUCTION**

26.01	Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Second Degree Murder
-------	--

#### **PART II.   FIRST AND SECOND DEGREE MURDER—NO INVOLUNTARY MANSLAUGHTER**

26.01A	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
26.01B	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
26.01C	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
26.01D	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
26.01E	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
26.01F	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity



---

## Volume 2 Table of Contents

	Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
26.01G	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
26.01H	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
PART III. FIRST AND SECOND DEGREE MURDER AND INVOLUNTARY MANSLAUGHTER	
26.01I	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On Any Other Charge
26.01J	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On Some Other Charge Or Charges
26.01K	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
26.01L	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
26.01M	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
26.01N	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
26.01O	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
26.01P	Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But

---

## Volume 2 Table of Contents

Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

### PART IV. LESSER INCLUDED OFFENSES

- 26.01Q Concluding Instruction—Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Charge Other Than The Greater And Lesser Included Offenses
- 26.01R Concluding Instruction—Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Charge Other Than The Greater And Lesser Included Offenses
- 26.01S Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 26.01T Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 26.01U Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 26.01V Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 26.01W Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 26.01X Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

### PART V. NO LESSER INCLUDED OFFENSES

- 26.01Y Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict
- 26.01Z Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity



---

## Volume 2 Table of Contents

	Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict
26.01AA	Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict
26.02	Verdict—Not Guilty
26.03	Verdict—Not Guilty By Reason Of Insanity
26.04	Verdict—Guilty But Mentally Ill
26.05	Verdict—Guilty
26.06	Death Penalty Verdicts
26.07	Deadlocked Jury Supplemental Instruction
26.08	Suggested Rule 436 Instruction When Admonishing Jurors During Trial
26.09	Suggested Rule 436 Instruction When Sending The Jury Home For The Night During Deliberations

---

### Chapter 27.00 SAMPLE SETS OF INSTRUCTIONS

---

#### SET 27.01

---

27.01	First Degree Murder—Self-Defense—Second Degree Murder—Statement Of The Defendant—(Defendant Is Arthur Fletcher)
-------	---

#### SET 27.02

---

27.02	Attempt First Degree Murder—Armed Robbery—Robbery Given As Lesser Included Offense—Accomplice Testimony—Prior Inconsistent Statements—Defendant With Prior Record—Venue At Issue—(Defendant Is Samuel Jones)
-------	--

#### SET 27.03

---

27.03	Criminal Sexual Assault—Aggravated Criminal Sexual Abuse—Two Defendants—Consent—(Defendants Are Sidney Sommers And Walter Winters)
-------	--

#### SET 27.04A

---

27.04A	First Degree Murder—Insanity Defense—Guilty But Mentally Ill Verdict—(Defendant Is Thomas Swanson)
--------	--

---

## *Volume 2 Table of Contents*

---

### **SET 27.04B**

---

- 27.04B                      First Degree Murder—Insanity Defense—Provocation—Second Degree Murder—Guilty But Mentally Ill Verdict—(Defendant Is Thomas Swanson)

---

### **SET 27.05**

---

- 27.05                      First Degree Murder With Some Counts Based On Felony Murder And Some Counts Based On “Knowing Or Intentional” Murder—Second Degree Murder—(Defendant Is Lester Williams)

---

### **SET 27.06**

---

- 27.06                      First Degree Murder—Second Degree Murder—Involuntary Manslaughter—(Defendant Is Edward Grady)

---

### **SET 27.07**

---

- 27.07                      Possession With The Intent To Deliver A Controlled Substance Given With Lesser Included Offenses—(Defendant Is Karen Scott)

---

## **Chapter 28.00 To 28A.00ENHANCEMENT/EXTENDED TERM SENTENCING**

---

### **I. UNITARY INSTRUCTIONS**

- 28.00                      Introduction To The Enhancement/Extended Term Sentencing Instructions
- 28.01                      Enhancement/Extended Term Factor(S)
- 28.02                      Enhancement/Extended Term Factor(S) Presumption Of Innocence—Reasonable Doubt—Burden Of Proof
- 28.03                      Issues In Enhancement/Extended Term Factor(S)
- 28.04                      Enhancement/Extended Term Factor(S)—Concluding Instruction
- 28.05                      Verdict—Allegation Not Proven
- 28.06                      Verdict—Allegation Proven

### **II. BIFURCATED INSTRUCTIONS**

- 28A.01                      Nature Of The Hearing, Duties Of The Jury And Functions Of The Court
- 28A.02                      General Instructions
- 28A.03                      Enhancement/Extended Term Factor(S)—Concluding Instruction

---

## **INDEX**

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# *INTRODUCTION TO IPI CRIMINAL*

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The following Illinois pattern jury instructions for criminal cases represent the cumulative effort of many dedicated past and present members of the Special Supreme Court Committee on Pattern Jury Instructions—Criminal.

The committee takes great effort in drafting clear and concise instructions for use by judges and practitioners, insuring that each instruction complies with all due process requirements, accurately states current statutory and case law, follows the intent of the legislature, is grammatically correct, and is presented in a clear and uniform manner. Most importantly, the committee strives to provide jurors with easy to understand definitions and issues instructions to help guide their deliberations in reaching an accurate verdict.

The committee wishes to thank the following persons for their guidance, support, vision, and hard work: Justice Robert L. Carter, the current committee's liaison with the Illinois Supreme Court, and all past Supreme Court liaisons; Michelle J. Courier, the current committee's liaison with the Administrative Office of the Illinois Courts, and all past AOIC liaisons; Professor John Erbes, the current committee Reporter, and all past committee Reporters; all of the former members of the committee; and, all of the past chairs of the committee.

The Special Supreme Court Committee on Pattern Jury Instructions-Criminal is dedicated to improving criminal justice by providing clear and accurate instructions. It is a privilege and an honor to serve as chair of this committee with so many intelligent, hard-working and conscientious women and men.

Attorney Robert A. Loeb

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Chair, Special Supreme Court Committee on Pattern Jury Instructions—Criminal





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# Chapter 17.00

## CANNABIS AND CONTROLLED SUBSTANCES\*

### SYNOPSIS

#### INTRODUCTION

- 17.01 Definition Of Possession Of Cannabis
- 17.02 Issues In Possession Of Cannabis
- 17.03 Definition Of Subsequent Offense Of Possession Of Cannabis
- 17.04 Issues In Subsequent Offense Of Possession Of Cannabis
- 17.05 Definition Of Manufacture Or Delivery Of Cannabis
- 17.05A Definition Of Deliver
- 17.06 Issues In Manufacture Or Delivery Of Cannabis
- 17.07 Definition Of Cannabis Trafficking
- 17.08 Issues In Cannabis Trafficking
- 17.09 Definition Of Delivery Of Cannabis—Enhancing Factors Based Upon Age
- 17.10 Issues In Delivery Of Cannabis—Enhancing Factors Based Upon Age
- 17.11 Definition Of Production Or Possession Of Cannabis Sativa Plant
- 17.12 Issues In Production Or Possession Of Cannabis Sativa Plant
- 17.13 Definition Of Calculated Criminal Cannabis Conspiracy
- 17.13A Agreement Implied From Conduct
- 17.14 Issues In Calculated Criminal Cannabis Conspiracy
- 17.15 Definition Of Subsequent Offense Of Calculated Criminal Cannabis Conspiracy
- 17.16 Issues In Subsequent Offense Of Calculated Criminal Cannabis Conspiracy

#### DISPOSITION TABLE

Showing where the Pattern Instructions in the Third Edition are covered in the Fourth Edition.

3d ed. Instruction Number	4th ed. Instruction Number
17.67	17.65A



- 17.17 Definition Of Manufacture Or Delivery Of Controlled Or Counterfeit Substance
- 17.18 Issues In Manufacture Or Delivery Of Controlled Or Counterfeit Substance
- 17.19 Definition Of Manufacture Of, Delivery Of, Or Possession With Intent To Manufacture Or Deliver A Controlled Or Counterfeit Substance—Enhancing Factors Based Upon Location
- 17.20 Issues In Manufacture Of, Delivery Of, Or Possession With Intent To Manufacture Or Deliver A Controlled Or Counterfeit Substance—Enhancing Factors Based Upon Location
- 17.21 Definition Of Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Age
- 17.22 Issues In Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Age
- 17.23 Definition Of Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Use Of Youths In Commission Of Offense
- 17.24 Issues In Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Use Of Youths In Commission Of Offense
- 17.25 Definition Of Delivery Of Controlled Substance—Enhancing Factors Based Upon Pregnant Woman Recipient
- 17.26 Issues In Delivery Of Controlled Substance—Enhancing Factors Based Upon Pregnant Woman Recipient
- 17.27 Definition Of Possession Of Controlled Or Counterfeit Substance
- 17.28 Issues In Possession Of Controlled Or Counterfeit Substance
- 17.29 Definition Of Calculated Criminal Drug Conspiracy
- 17.30 Issues In Calculated Criminal Drug Conspiracy
- 17.31 Definition Of Criminal Drug Conspiracy
- 17.32 Issues In Criminal Drug Conspiracy
- 17.33 Definition Of Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance
- 17.33A Definition Of Counterfeit Substance
- 17.33B Definition Of Look-Alike Substance
- 17.34 Issues In Manufacture, Distribution, Advertisement Of Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance
- 17.35 Definition Of Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance—Enhancing Factors Based Upon Location
- 17.36 Issues In Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance—Enhancing Factors Based Upon Location
- 17.37 Definition Of Possession Of Hypodermic Syringe Or Needle
- 17.38 Issues In Possession Of Hypodermic Syringe Or Needle
- 17.39 Definition Of Delivery, Sale, Or Exchange Of Hypodermic Syringe Or Needle
- 17.40 Issues In Delivery, Sale, Or Exchange Of Hypodermic Syringe Or Needle

- 17.41 Definition Of Permitting Unlawful Use Of A Building
- 17.41A Definition Of Use Of A Dangerous Place For The Commission Of A Controlled Substance Or Cannabis Offense
- 17.42 Issues In Permitting Unlawful Use Of A Building
- 17.42A Issues In Use Of A Dangerous Place For The Commission Of A Controlled Substance Or Cannabis Offense
- 17.43 Definition Of Money Laundering
- 17.43A Definition Of Financial Transaction
- 17.43B Definition Of Financial Institution
- 17.43C Definition Of Monetary Instrument
- 17.43D Definition Of Criminally Derived Property
- 17.43E Definition Of Place
- 17.43F Inferences On Intended Use Of A Place
- 17.44 Issues In Money Laundering
- 17.45 Definition Of Controlled Substances Trafficking
- 17.46 Issues In Controlled Substances Trafficking
- 17.47 Definition Of Controlled Substances Trafficking—Use Of A Cellular Radio Telecommunications Device
- 17.48 Issues In Controlled Substances Trafficking—Use Of A Cellular Radio Telecommunications Device
- 17.49 Definition Of Unlawful Transfer Of A Telecommunications Device To A Minor
- 17.49A Definition Of Telecommunications Device
- 17.50 Issues In Unlawful Transfer Of A Telecommunications Device To A Minor
- 17.51–17.56 Reserved
- 17.57 Definition Of Sale Of Drug Paraphernalia
- 17.57A Definition Of Drug Paraphernalia
- 17.58 Issues In Sale Of Drug Paraphernalia
- 17.59 Definition Of Sale Of Drug Paraphernalia To A Person Under 18 Years Of Age
- 17.60 Issues In Sale Of Drug Paraphernalia To A Person Under 18 Years Of Age
- 17.61 Definition Of Sale Of Drug Paraphernalia To A Pregnant Woman
- 17.62 Issues In Sale Of Drug Paraphernalia To A Pregnant Woman
- 17.63 Definition Of Manufacture Or Delivery Of Cannabis—Enhancing Factor Based On Location On School Grounds
- 17.64 Issues In Manufacture Or Delivery Of Cannabis—Enhancing Factor Based On Location On School Grounds
- 17.65 Definition Of Possession Of Drug Paraphernalia
- 17.65A Definition Of Inference Of Legitimacy—Possession Or Sale Of Drug Paraphernalia
- 17.66 Issues In Possession Of Drug Paraphernalia
- 17.67 Definition Of Streetgang Criminal Drug Conspiracy
- 17.67A Definition Of Organized Gang

## 17.68

## Issues In Streetgang Criminal Drug Conspiracy



## INTRODUCTION

Generally, the jury need not be instructed as to the definitions of words which are contained or defined in the Statute. There will, however, be situations in which a definition will be necessary. One example would be a prosecution for the possession or delivery of a substance containing cannabis (720 ILCS 550/4 and 550/5), when there is evidence that raises an issue as to the nature of the substance involved. In this particular example, give the definition of cannabis (720 ILCS 550/3(a)) to the jury.

When the need for a definitional instruction arises, and the particular word is not defined in these Pattern Instructions, the Committee recommends that the jury be given an instruction which defines the term involved as set out in the appropriate section of the Statute (720 ILCS 550/3; 720 ILCS 570/102), with inapplicable language deleted, to avoid confusing the jury.

## 17.01 Definition Of Possession Of Cannabis

A person commits the offense of possession of cannabis when he knowingly possesses a substance containing cannabis [and that substance containing the cannabis weighs [(more than \_\_\_\_\_ grams) (more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams)]]].

### Committee Note

*Instruction and Note Approved January 26, 2018*

720 ILCS 550/4 (West 2017).

Give Instruction 17.02.

When possession of more than 10 grams of a substance containing cannabis is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. *See People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist. 1974); *People v. Hill*, 169 Ill.App.3d 901, 524 N.E.2d 604, (1st Dist. 1988). When the jury must decide this element, use the bracketed material in this instruction and use both propositions in Instruction 17.02.

Particular care must be taken when disputes about weight support lesser included offenses. See example in this Committee Note, below, and *People v. Smith*, 67 Ill.App.3d 952, 385 N.E.2d 707, (5th Dist. 1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant knew the quantity was of any specific amount. *See People v. Cortez*, 77 Ill.App.3d 448, 32 Ill.Dec. 796, 395 N.E.2d 1177 (1st Dist. 1979); *People v. Ziehm*, 120 Ill.App.3d 777, 76 Ill.Dec. 188, 458 N.E.2d 588 (2d Dist. 1983).

Although the quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 526 N.E.2d 204, (4th Dist. 1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most possession cases to add the phrase “. . . but not more than \_\_\_\_\_ grams”. Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 550/4(b) through (d) an issue in the case.

If the evidence concerning the weight of the substance containing cannabis is in dispute, then separate issues and definitional instructions and verdict forms should be given to permit the jury to resolve that dispute with its verdict. For example, if a defendant is charged with possession of more than 500 grams of a substance containing cannabis (720 ILCS 550/4(e)), a Class 3 felony, the defendant may claim that the substance weighed only 480 grams, thereby reducing the offense to a Class 4 felony.

Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses.

The first definitional instruction should read as follows:

“A person commits the offense of possession of cannabis when he knowingly

possesses a substance containing cannabis and that substance containing the cannabis weighs more than 500 grams.”

The second definitional instruction should read as follows:

“A person commits the offense of possession of cannabis when he knowingly possesses a substance containing cannabis and that substance containing the cannabis weighs more than 100 grams but not more than 500 grams.”

The first issues instruction should read as follows:

“To sustain the charge of possession of cannabis when the substance containing the cannabis weighed more than 500 grams, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed a substance containing cannabis; and

*Second Proposition:* That the weight of the substance possessed was more than 500 grams.”

Then the standard concluding two paragraphs should be added.

The second issues instruction should read as follows:

“To sustain the charge of possession of cannabis when the substance containing the cannabis weighed more than 100 grams but not more than 500 grams, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed a substance containing cannabis; and

*Second Proposition:* That the weight of the substance possessed was more than 100 grams but not more than 500 grams.”

Then the standard concluding two paragraphs should be added.

Finally, the three verdict forms should repeat the appropriate language from the lead-in paragraph of each issues instruction. In this example, the verdict forms would read as follows:

“We the jury find the defendant guilty of possession of cannabis when the substance containing the cannabis weighed more than 500 grams.”

“We the jury find the defendant guilty of possession of cannabis when the substance containing the cannabis weighed more than 100 grams but not more than 500 grams.”

“We the jury find the defendant not guilty.”

If the defendant is being tried on other charges and a general not guilty verdict form cannot be used, it should read:

“We the jury find the defendant not guilty of possession of cannabis when the substance containing the cannabis weighed more than 500 grams and not guilty of possession of cannabis when the substance containing the cannabis weighed more than 100 grams but not more than 500 grams.”

Additional instructions should be given for each specific weight level (720 ILCS 550/4(a) through (e)) constituting a different class offense that, based upon the evidence in the case, the jury will be permitted to consider. In other words, if the



dispute concerning weight reaches as far down as less than 100 grams, then other instructions should be given permitting the jury to find the defendant guilty of the lesser included Class A misdemeanor.

See Instructions 4.15 and 4.16, defining the term “possession”.

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

See generally Instructions 26.01Q through 26.01X, regarding verdicts in lesser included offense situations.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

## 17.02 Issues In Possession Of Cannabis

To sustain the charge of possession of cannabis [when the substance containing the cannabis weighed [(more than \_\_\_\_\_ grams) (more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly possessed a substance containing cannabis.

[or]

*First Proposition:* That the defendant knowingly possessed a substance containing cannabis; and

*Second Proposition:* That the weight of the substance possessed was [(more than \_\_\_\_\_ grams) (more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

*Instruction and Note Approved January 26, 2018*

720 ILCS 550/4 (West 2017).

Give Instruction 17.01; for discussion and examples, see the Committee Note to that instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**17.03 Definition Of Subsequent Offense Of Possession Of Cannabis**

A person commits the offense of subsequent offense of possession of cannabis when he, having been convicted of the offense of \_\_\_\_\_, knowingly possesses a substance containing cannabis and that substance containing the cannabis weighs more than [(30) (100)] grams.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 550/3(l), 550/4(c), and 550/4(d) (West 2017).

Give Instruction 17.04.

The first conviction must precede the conduct constituting the subsequent offense. *See People v. Phillips*, 56 Ill.App.3d 689, 371 N.E.2d 1214 (5th Dist. 1978); *People v. Miller*, 115 Ill.App.3d 592, 450 N.E.2d 767 (2d Dist. 1983).

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. *See People v. Hicks*, 119 Ill.2d 29, 518 N.E.2d 148 (1987); *People v. Palmer*, 104 Ill.2d 340, 472 N.E.2d 795 (1984); *People v. Mays*, 80 Ill.App.3d 340, 399 N.E.2d 718, (3d Dist.1980). However, 725 ILCS 5/111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be presented to the jury and this instruction should not be used. *See People v. Kennard*, 204 Ill.App.3d 641, 561 N.E.2d 1188 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 17.01.

Subsequent offense enhancement for possession applies only when a defendant is charged with possessing (1) more than 30 grams but less than 100 grams, or (2) more than 100 grams but less than 500 grams. 720 ILCS 550/4. When possession of more than 30 or 100 grams of a substance containing cannabis is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. *See People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist. 1974); *People v. Hill*, 169 Ill.App.3d 901, 524 N.E.2d 604 (1st Dist. 1988).

When the jury must determine this element, use the bracketed weight in this instruction and in Instruction 17.04.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 385 N.E.2d 707 (5th Dist. 1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant knew the quantity was of any specific amount. *See People v. Cortez*, 77 Ill.App.3d 448, 32 Ill.Dec. 796, 395 N.E.2d 1177 (1st Dist. 1979); *People v. Ziehm*, 120 Ill.App.3d 777, 76 Ill. Dec. 188, 458 N.E.2d 588 (2d Dist. 1983).

The quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 526 N.E.2d 204 (4th Dist.1988). However, to ensure clarity, the



Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

See Committee Note to Instruction 17.01, concerning verdict forms and disputes of weight.

Insert in the blank the prior conviction.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**17.04 Issues In Subsequent Offense Of Possession Of Cannabis**

To sustain the charge of subsequent offense of possession of cannabis when the substance containing the cannabis weighed more than [(30) (100)] grams, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed a substance containing cannabis; and

*Second Proposition:* That the weight of the substance possessed was more than [(30) (100)] grams; and

*Third Proposition:* That at the time of the possession the defendant had been convicted of the offense of \_\_\_\_\_.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 550/3(l), 550/4(c), and 550/4(d) (West 2017).

Give Instruction 17.03 and see Committee Note to 17.03.

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. *See People v. Hicks*, 119 Ill.2d 29, 115 Ill.Dec. 623, 518 N.E.2d 148 (1987); *People v. Palmer*, 104 Ill.2d 340, 84 Ill.Dec. 658, 472 N.E.2d 795 (1984); *People v. Mays*, 80 Ill.App.3d 340, 35 Ill.Dec. 652, 399 N.E.2d 718 (3d Dist.1980). However, 725 ILCS 5/111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the grade of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be an element of the offense and this instruction should not be used. For offenses occurring after June 30, 1990, use Instruction 17.02.

Subsequent offense possession of cannabis applies only when a defendant is charged with possessing (1) more than 30 grams but less than 100 grams, or (2) more than 100 grams but less than 500 grams. 720 ILCS 550/4.

See Committee Note to Instruction 17.01 concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is an issue.

Insert in the blank the prior conviction.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should

not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**17.05 Definition Of Manufacture Or Delivery Of Cannabis**

A person commits the offense of [(manufacture of) (delivery of) (possession with intent to deliver) (possession with intent to manufacture)] cannabis when he knowingly [(manufactures) (delivers) (possesses with intent to deliver) (possesses with intent to manufacture)] a substance containing cannabis [and the substance containing the cannabis weighs [(more than \_\_\_\_\_ grams) (more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams)]]].

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 550/5 (West 2017).

Give Instruction 17.06.

In many cases it will be necessary to give other instructions defining terms used in this instruction. See Instruction 17.05A, defining “deliver”; Instructions 4.15 and 4.16, defining “possession”; and 720 ILCS 550/3(h), defining the term “manufacture.”

When manufacture or delivery of more than 10 grams of a substance containing cannabis is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist. 1974); *People v. Hill*, 169 Ill.App.3d 901, 524 N.E.2d 604 (1st Dist. 1988). When the jury must decide this element, use the bracketed material in this instruction and use both propositions in Instruction 17.06.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 385 N.E.2d 707 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant knew the quantity was of any specific amount. See *People v. Cortez*, 77 Ill.App.3d 448, 395 N.E.2d 1177 (1st Dist.1979); *People v. Ziehm*, 120 Ill.App.3d 777, 458 N.E.2d 588 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 526 N.E.2d 204 (4th Dist. 1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most manufacture and delivery cases to add the phrase “. . . but not more than \_\_\_\_\_ grams”. Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 550/5(b) through (d) an issue in the case.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is in dispute.

See Committee Note to Instruction 17.05A if delivery is in dispute.

If other terms used in this instruction need to be defined, see definitions contained in Chapter 720.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**17.05A Definition Of Deliver**

[1] The word “deliver” means to transfer possession or to attempt to transfer possession.

[2] The word “deliver” includes a constructive transfer of possession which occurs without an actual physical transfer. When the conduct or declarations of the person who has the right to exercise control over a thing is such as to effectively relinquish the right of control to another person, so that the other person is then in constructive possession, there has been a delivery.

[3] A delivery may occur with or without the transfer or exchange of money, or with or without the transfer or exchange of other consideration.

**Committee Note**

720 ILCS 550/3(d) and 570/102(h) (West, 1999).

Generally, when the offense involves a delivery (720 ILCS 550/5, 550/5.1, 550/7, and 550/9; 720 ILCS 570/401, 570/405, 570/407, and 570/407.1) and the evidence indicates that the delivery in question was an actual physical transfer of possession, no definition of the term need be given to the jury. The term, in this sense, is commonly understood by laymen. *People v. Monroe*, 32 Ill.App.3d 482, 335 N.E.2d 783 (3d Dist.1975).

Give Paragraph [1] when there is some evidence that the delivery in question consisted of an attempt to transfer possession.

Give Paragraphs [1] and [2] when there is some evidence that the delivery in question involved a constructive transfer of possession.

Paragraph [3] may be given when the Court believes it would help the jury understand the issues.

It may be necessary, in situations in which the possession of the defendant or the person who received delivery is either constructive or joint, to give appropriate paragraphs contained in Instructions 4.15 and 4.16 relating to possession.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.



## 17.06 Issues In Manufacture Or Delivery Of Cannabis

To sustain the charge of [(manufacture of) (delivery of) (possession with intent to deliver) (possession with intent to manufacture)] cannabis [when the substance containing the cannabis weighed [(more than \_\_\_\_\_ grams) (more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing cannabis.

[or]

*First Proposition:* That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing cannabis; and

*Second Proposition:* That the weight of the substance [(manufactured) (delivered) (possessed)] was [(more than \_\_\_\_\_ grams) (more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any one of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

*Instruction and Note Approved January 26, 2018*

720 ILCS 550/5 (West 2017)

Give Instruction 17.05.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is an issue.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**17.07 Definition Of Cannabis Trafficking**

A person commits the offense of cannabis trafficking when he knowingly [(brings) (causes to be brought)] into this State [(for the purpose of manufacture) (for the purpose of delivery) (with the intent to manufacture) (with the intent to deliver)] 2,500 grams or more of cannabis in this State or any other state or country.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 550/5.1 (West 2017), added by P.A. 85-1388, effective January 1, 1989.

Give Instruction 17.08.

Although the prosecution must prove the quantity was 2,500 grams or more, it need not prove that the defendant knew the quantity was of any specific amount. *See People v. Cortez*, 77 Ill.App.3d 448, 395 N.E.2d 1177; *People v. Ziehm*, 120 Ill.App.3d 777, 458 N.E.2d 588 (2d Dist. 1983).

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see definitions contained in Chapter 720.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**17.08 Issues In Cannabis Trafficking**

To sustain the charge of cannabis trafficking, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(brought cannabis) (caused cannabis to be brought)] into this State; and

*Second Proposition:* That the cannabis brought into Illinois weighed 2,500 grams or more; and

*Third Proposition:* That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the cannabis in this State or any other state or country.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note***Instruction and Note Approved January 26, 2018*

720 ILCS 550/5.1 (West 2017) (formerly Ill.Rev.Stat. ch. 561/2, § 705.1), added by P.A. 85-1388, effective January 1, 1989.

Give Instruction 17.07.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



### 17.09 Definition Of Delivery Of Cannabis—Enhancing Factors Based Upon Age

A person commits the offense of delivery of cannabis to a person under 18 years of age when he, being 18 years of age or older, knowingly delivers cannabis to a person under 18 years of age who is at least 3 years junior to defendant [and the substance containing the cannabis weighs [(more than \_\_\_\_\_ grams) (more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams)]]].

#### Committee Note

*Instruction and Note Approved January 26, 2018*

720 ILCS 550/7 (West 2017) (formerly Ill.Rev.Stat. ch. 561/2, § 707).

Give Instruction 17.10.

When delivery of more than 10 grams of a substance containing cannabis is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. *See People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist. 1974); *People v. Hill*, 169 Ill.App.3d 901, 120 Ill.Dec. 574, 524 N.E.2d 604 (1st Dist. 1988). When the jury must decide this element, use the bracketed material in this instruction and use all four propositions in Instruction 17.10.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 385 N.E.2d 707 (5th Dist. 1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant knew the quantity was of any specific amount. *See People v. Cortez*, 77 Ill.App.3d 448, 395 N.E.2d 1177 (1st Dist. 1979); *People v. Ziehm*, 120 Ill.App.3d 777, 458 N.E.2d 588 (2d Dist. 1983).

The quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 526 N.E.2d 204 (4th Dist. 1988). However, to ensure clarity, the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most delivery cases to add the phrase “but not more than \_\_\_\_\_ grams”. Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 550/5(b) through (d) an issue in the case.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is in dispute.

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see the definitions contained in 720 ILCS 550/3.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should

not be included in the instruction submitted to the jury.

**17.10 Issues In Delivery Of Cannabis—Enhancing Factors Based Upon Age**

To sustain the charge of the delivery of cannabis to a person under 18 years of age [when the substance containing the cannabis weighed [(more than \_\_\_\_\_ grams) (more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams)]], the State must prove the following propositions:

*First Proposition:* That the defendant was 18 years of age or older on the date in question; and

*Second Proposition:* That the defendant knowingly delivered a substance containing cannabis; and

*Third Proposition:* That the person to whom the substance was delivered by the defendant was under 18 years of age and at least 3 years junior to the defendant on the date in question.

[or]

*Third Proposition:* That the person to whom the substance was delivered by the defendant was under 18 years of age and at least 3 years junior to the defendant on the date in question; and

*Fourth Proposition:* That the weight of the substance delivered was [(more than \_\_\_\_\_ grams) (more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 550/7 (West 2017) (formerly Ill.Rev.Stat. ch. 561/2, § 707).

Give Instruction 17.09.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is an issue.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



## 17.11 Definition Of Production Or Possession Of Cannabis Sativa Plant

A person commits the offense of [(production) (possession) ] of [ (a) (more than \_\_\_\_\_) (more than \_\_\_\_\_ but not more than \_\_\_\_\_)] cannabis sativa plant[s] when he knowingly [(produces) (possesses) ] [ (a) (more than \_\_\_\_\_) (more than \_\_\_\_\_ but not more than \_\_\_\_\_)] cannabis sativa plant[s].

[The words “produces” and “production” mean planting, cultivating, tending, or harvesting.]

### Committee Note

*Instruction and Note Approved January 26, 2018*

720 ILCS 550/3(j) and 550/8 (West 2017).

Give Instruction 17.12.

720 ILCS 550/8 contains an exception for possession authorized by Section 550/11, but there is no burden on the State to negate that exception. (*See* Section 550/16.) Therefore, no reference to the exception is made in the definitional or issues instructions for this offense, but it may be necessary to give additional instructions if the defendant relies on that exception.

The question of the number of plants involved in this charge must be submitted to the jury for its resolution when that number exceeds five and is the basis for increased penalties under Sections 550/8(b) through (d).

When the prosecution must prove the quantity of the plants as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. *See People v. Cortez*, 77 Ill.App.3d 448, 395 N.E.2d 1177 (1st Dist. 1979); *People v. Ziehm*, 120 Ill.App.3d 777, 458 N.E.2d 588 (2d Dist. 1983).

It should not be necessary in most cases to add the phrase “but not more than \_\_\_\_\_”. Only when a lesser included offense instruction is given, based upon a lesser number of plants being produced or possessed, are the statutory upper limits provided in Sections 550/8(b) and (c) an issue in the case.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the number of plants is an issue.

See Instructions 4.15 and 4.16, defining the term “possession.”

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**17.12 Issues In Production Or Possession Of Cannabis Sativa Plant**

To sustain the charge of [(production) (possession)] of [(a) (more than \_\_\_\_\_) (more than \_\_\_\_\_ but not more than \_\_\_\_\_)] cannabis sativa plant[s], the State must prove the following proposition:

That the defendant knowingly [(produced) (possessed)] [(a) (more than \_\_\_\_\_) (more than \_\_\_\_\_ but not more than \_\_\_\_\_)] cannabis sativa plant[s].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 550/3(j) and 550/8 (West 2017) (formerly Ill.Rev.Stat. ch. 561/2, §§ 703(j) and 708).

Give Instruction 17.11.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 17.13 Definition Of Calculated Criminal Cannabis Conspiracy

A person commits the offense of calculated criminal cannabis conspiracy when he knowingly [(possesses) (produces) (delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)], and he does so as part of an agreement undertaken and carried on with two or more other persons, and he

[1] obtains anything of value greater than \$500 from the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

[2] organizes, directs, or finances the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

#### Committee Note

720 ILCS 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 709).

Give Instruction 17.14.

For a decision concerning the evidence required to prove a calculated drug conspiracy, see *People v. Harmison*, 108 Ill.2d 197, 91 Ill.Dec. 162, 483 N.E.2d 508 (1985).

See Committee Note to Instruction 17.05B if delivery is an issue.

See Instruction 17.13A, regarding the word “agreement.”

See Instructions 4.15 and 4.16, defining the word “possession.”

If other terms used in this instruction need to be defined, see definitions contained in Chapter 720.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**17.13A Agreement Implied From Conduct**

An agreement may be implied from the conduct of the parties although they acted separately or by different means and did not come together or enter into an express agreement.

**Committee Note**

This instruction may be given in a conspiracy case when it would help the jury understand the issues.

See *People v. Heard*, 48 Ill.2d 356, 270 N.E.2d 18 (1971); *People v. Collins*, 70 Ill.App.3d 413, 26 Ill.Dec. 165, 387 N.E.2d 995 (1st Dist.1979).

## 17.14 Issues In Calculated Criminal Cannabis Conspiracy

To sustain the charge of calculated criminal cannabis conspiracy, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(possessed) (produced) (manufactured) (delivered) (possessed with intent to deliver) (possessed with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)]; and

*Second Proposition:* That the defendant did so as part of an agreement undertaken or carried on with two or more other persons; and

*Third Proposition:* That the defendant obtained something of value greater than \$500 from such [(possession) (production) (manufacture) (delivery) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

*Third Proposition:* That the defendant organized, directed, or financed such [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 709).

Give Instruction 17.13.

The Committee cautions against using normal principles of accountability. The defendant himself must receive the benefit or perform the acts contained in either of the Third Propositions, see *People v. Holmes*, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist.1976), but there is no clear answer to the question of whether the defendant himself must have performed the acts in the First Proposition. See *People v. Vincent*, 92 Ill.App.3d 446, 47 Ill.Dec. 834, 415 N.E.2d 1147 (1st Dist.1980).

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is an issue.

See Instruction 17.13A, regarding the word “agreement.”

Use applicable paragraphs and bracketed material.

### 17.15 Definition Of Subsequent Offense Of Calculated Criminal Cannabis Conspiracy

A person commits a subsequent offense of calculated criminal cannabis conspiracy when he, having been convicted of the offense of \_\_\_\_\_, knowingly [(possesses) (produces) (delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)], and he does so as part of an agreement undertaken and carried on with two or more other persons, and he

[1] obtains anything of value greater than \$500 from the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

[2] organizes, directs, or finances the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

#### Committee Note

720 ILCS 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 709).

Give Instruction 17.16.

The first conviction must precede the *conduct* constituting the subsequent offense. See *People v. Phillips*, 56 Ill.App.3d 689, 14 Ill.Dec. 161, 371 N.E.2d 1214 (5th Dist.1978); *People v. Miller*, 115 Ill.App.3d 592, 450 N.E.2d 767, 71 Ill.Dec. 79 (2d Dist.1983).

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. See *People v. Hicks*, 119 Ill.2d 29, 115 Ill.Dec. 623, 518 N.E.2d 148 (1987); *People v. Palmer*, 104 Ill.2d 340, 84 Ill.Dec. 658, 472 N.E.2d 795 (1984); *People v. Mays*, 80 Ill.App.3d 340, 35 Ill.Dec. 652, 399 N.E.2d 718 (3d Dist.1980). However, 725 ILCS 5/111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be presented to the jury and this instruction should not be used. See *People v. Kennard*, 204 Ill.App.3d 641, 149 Ill.Dec. 492, 561 N.E.2d 1188 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 17.13.

For a decision concerning the evidence required to prove a calculated drug conspiracy, see *People v. Harmison*, 108 Ill.2d 197, 91 Ill.Dec. 162, 483 N.E.2d 508 (1985).

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instruction 17.13A, regarding the word “agreement.”

See 720 ILCS 550/9(a) for the prior offense that will aggravate the penalty.

See Instructions 4.15 and 4.16, defining the word “possession.”



If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Insert in the blank the prior conviction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### 17.16 Issues In Subsequent Offense Of Calculated Criminal Cannabis Conspiracy

To sustain the charge of subsequent offense of calculated criminal cannabis conspiracy, the State must prove the following propositions:

*First Proposition:* That the defendant had been convicted of the offense of \_\_\_\_\_; and

*Second Proposition:* That, after the date of such conviction, the defendant knowingly [(possessed) (produced) (manufactured) (delivered) (possessed with intent to deliver) (possessed with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)]; and

*Third Proposition:* That the defendant did so as part of an agreement undertaken or carried on with two or more other persons; and

*Fourth Proposition:* That the defendant obtained something of value greater than \$500 from such [(possession) (production) (manufacture) (delivery) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

*Fourth Proposition:* That the defendant organized, directed, or financed such [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 709).

Give Instruction 17.15.

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. See *People v. Hicks*, 119 Ill.2d 29, 115 Ill.Dec. 623, 518 N.E.2d 148 (1987); *People v. Palmer*, 104 Ill.2d 340, 84 Ill.Dec. 658, 472 N.E.2d 795 (1984); *People v. Mays*, 80 Ill.App.3d 340, 35 Ill.Dec. 652, 399 N.E.2d 718 (3d Dist.1980). However, 725 ILCS 5/111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be presented to the jury and this instruction should not be used. See *People v. Kennard*, 204 Ill.App.3d 641, 149 Ill.Dec. 492, 561 N.E.2d 1188 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 17.14.

The Committee cautions against using normal principles of accountability. The defendant himself must receive the benefit or perform the acts contained in either of the Fourth Propositions, see *People v. Holmes*, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist.1976), but there is no clear answer to the question of whether the defendant himself must have performed the acts in the First Proposition. See *People v. Vincent*, 92 Ill.App.3d 446, 47 Ill.Dec. 834, 415 N.E.2d 1147 (1st Dist.1980).

See Instruction 17.13A, regarding the word "agreement."

See Committee Note to Instruction 17.14.

Use applicable paragraphs and bracketed material.



### 17.17 Definition Of Manufacture Or Delivery Of Controlled Or Counterfeit Substance

A person commits the offense of [(delivery of) (manufacture of) (possession with intent to deliver) (possession with intent to manufacture)] a [(controlled) (counterfeit)] substance when he knowingly [(delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] a substance containing a [(controlled) (counterfeit)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)]]].

#### Committee Note

720 ILCS 550/401 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1401). P.A. 86-266 and P.A. 86-442 contain identical language and are both effective January 1, 1990. These Acts repealed Section 1401.2 and merged those enhancing provisions into a new Section 1401 and changed the weight format in portions of Section 1401 from “more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams” to “\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams.” In cases alleging violations before that effective date, the Committee suggests the use of instructions from the 1989 Supplement to the Second Edition. P.A. 86-604, also effective January 1, 1990, is basically identical to former Section 1401, with slight modifications to LSD provisions, and continues to refer to the Section 1401.2 enhancing provisions repealed by the other two Acts. The Committee takes no position on the legal effect of these inconsistencies. The Section 1401 instructions in this Third Edition are based on P.A. 86-266 and P.A. 86-442. The instructions in the 1989 Supplement to the Second Edition would apply to P.A. 86-604.

Give Instruction 17.18.

It may be necessary to give other instructions defining terms used in this instruction. See Instruction 17.05A, defining the word “deliver”; Instructions 4.15 and 4.16, defining the word “possession”; Instruction 17.33A, defining the term “counterfeit substance”; 720 ILCS 570/102(z), defining the word “manufacture”; 720 ILCS 570/401, defining the term “controlled substance analog.”

When manufacture or delivery of more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); *People v. Hill*, 169 Ill.App.3d 901, 120 Ill.Dec. 574, 524 N.E.2d 604 (1st Dist.1988). When the jury must decide this element, use the final bracketed material in this instruction and use both propositions in Instruction 17.18.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 24 Ill.Dec. 566, 385 N.E.2d 707 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See *People v. Cortez*, 77 Ill.App.3d 448, 32 Ill.Dec. 796, 395

N.E.2d 1177 (1st Dist.1979); *People v. Ziehm*, 120 Ill.App.3d 777, 76 Ill.Dec. 188, 458 N.E.2d 588 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 122 Ill.Dec. 64, 526 N.E.2d 204 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most manufacture and delivery cases to add the phrase “. . . but less than \_\_\_\_\_ grams.” Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 570/401 an issue in the case.

The phrase “controlled substance analog” has been omitted because a controlled substance ordinarily includes its salts, isomers, and synthetic form. See *People v. Chianakas*, 114 Ill.App.3d 496, 69 Ill.Dec. 902, 448 N.E.2d 620 (2d Dist.1983); *People v. Atencia*, 113 Ill.App.3d 247, 68 Ill.Dec. 846, 446 N.E.2d 1243 (1st Dist.1983). However, in certain cases the nature of the chemical evidence will be such that the phrase “a controlled substance or controlled substance analog” should be used in place of the phrase “a controlled substance.”

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.07.

**17.18 Issues In Manufacture Or Delivery Of Controlled Or Counterfeit Substance**

To sustain the charge of [(manufacture) (delivery) (possession with intent to manufacture) (possession with intent to deliver)] a [(controlled) (counterfeit)] substance [when the substance containing the [(controlled) (counterfeit)] substance weighed [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing [(\_\_\_\_\_ , a controlled substance) (a counterfeit substance)].

[or]

*First Proposition:* That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing [(\_\_\_\_\_ , a controlled substance) (a counterfeit substance)]; and

*Second Proposition:* That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any one of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 570/401 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1401). See Committee Note to Instruction 17.17, regarding inconsistent amendments to this section, effective January 1, 1990.

Give Instruction 17.17.

If any of the enhancing factors specified in 720 ILCS 570/407 and 570/407.1 are charged, consider the use of the appropriate Instruction from 17.20, 17.22, or 17.24.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.07.



**17.19 Definition Of Manufacture Of, Delivery Of, Or Possession With Intent To Manufacture Or Deliver A Controlled Or Counterfeit Substance—Enhancing Factors Based Upon Location**

A person commits the offense of [(delivery of) (manufacture of) (possession with intent to deliver) (possession with intent to manufacture)] a [(controlled) (counterfeit)] substance when he knowingly [(delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] a substance containing a [(controlled) (counterfeit)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)]] while

[1] in a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]]].

[or]

[2] on the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]]].

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

#### Committee Note

720 ILCS 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, § 1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 2, 1985, amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997.

Give Instruction 17.20.

Use the bracketed material regarding the time of day, time of year, or whether classes were currently in session at the time of the events in question for alternatives [1] through [3] only when the time of day, time of year, or whether classes were currently in session becomes a potential issue.

720 ILCS 570/407(b), as established by P.A. 84-1075 and as amended by P.A. 85-616, P.A. 86-946, P.A. 87-524, and P.A. 89-451, sets forth geographical factors enhancing the penalties for violations of 720 ILCS 570/401 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, § 1401 (1991)) as listed in the above alternatives numbered [1] through [12]. Select the alternative that corresponds to the location in the charge. Before January 1, 1990, as a general rule, Section 407 raised the classification for a violation on or within 1000 feet of certain locations one grade higher than the classification would normally be for the violation elsewhere. Effective January 1, 1990, 720 ILCS 570/401 was amended by three Public Acts, two consistent and one inconsistent. The Committee takes no position as to the legal effects the inconsistent amendments to the predicate offenses have on these Section 570/407(b) cases. See also Committee Note to Instruction 17.17.

When more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and becomes an essential element to be decided by the jury. See *People v. Hill*, 169 Ill.App.3d 901, 120 Ill.Dec. 574, 524 N.E.2d 604 (1st Dist.1988); *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974). When the jury must decide the weight of the substance, use the final bracketed material in the first paragraph of this instruction and use all three propositions in Instruction 17.20.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 24 Ill.Dec. 566, 385 N.E.2d 707 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See *People v. Ziehm*, 120 Ill.App.3d 777, 76 Ill.Dec. 188, 458

N.E.2d 588 (2d Dist.1983); *People v. Cortez*, 77 Ill.App.3d 448, 32 Ill.Dec. 796, 395 N.E.2d 1177 (1st Dist.1979).

Similarly, when the prosecution must prove one of the enhancing factors based upon location as an element of the offense, it need not prove that the defendant knew he was at such a location. *People v. Brooks*, 271 Ill.App.3d 570, 573, 207 Ill.Dec. 926, 928, 648 N.E.2d 626, 628 (4th Dist.1995).

Although the quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 122 Ill.Dec. 64, 526 N.E.2d 204 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most manufacture and delivery cases to add the phrase “. . . but less than \_\_\_\_\_ grams.” Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 570/401 an issue in the case.

This instruction does not include language for a look-alike substance offense charged under 720 ILCS 570/407(b)(3) (formerly Ill.Rev.Stat. ch. 561/2, § 1407(b)(3) (1991)) with 720 ILCS 570/404(b) (formerly Ill.Rev.Stat. ch. 561/2, § 1404(b) (1991)) as the predicate offense. For that offense, see Instruction 17.35.

For a case involving the relationship between the predicate offense and the enhanced offense under Section 407(b), see *People v. Lipscomb*, 173 Ill.App.3d 416, 123 Ill.Dec. 241, 527 N.E.2d 704 (4th Dist.1988).

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instruction 17.33A, defining the term “counterfeit substance.”

If other terms used in this instruction need to be defined, see the definitions contained in the Illinois Controlled Substances Act, 720 ILCS 570/100 et seq. (West, 1992).

Use applicable bracketed material.



**17.20 Issues In Manufacture Of, Delivery Of, Or Possession With Intent To Manufacture Or Deliver A Controlled Or Counterfeit Substance—Enhancing Factors Based Upon Location**

To sustain the charge of [(delivery of) (manufacture of) (possession with intent to deliver) (possession with intent to manufacture)] a [(controlled) (counterfeit)] substance [when the substance containing the [(controlled) (counterfeit)] substance weighed [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)]] while

[1] in a school, the State must prove the following propositions:

[or]

[2] on the real property comprising a school, the State must prove the following propositions:

[or]

[3] on a public way within 1000 feet of the real property comprising a school, the State must prove the following propositions:

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)], the State must prove the following propositions:

[or]

[5] in residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[8] in a public park, the State must prove the following propositions:

[or]

[9] on the real property comprising a public park, the State must prove the following propositions:

[or]

[10] on a public way within 1000 feet of the real property comprising a public park, the State must prove the following propositions:

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship, the State must prove the following propositions:

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(delivered) (manufactured) (possessed with intent to deliver) (possessed with intent to manufacture)] a substance containing [(\_\_\_\_\_, a controlled substance) (a counterfeit substance)]; and

*Second Proposition:* That the [(delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture)] took place

[1] in a school [regardless of the [(time of day) (time of year) (whether classes were currently in session at the time)]]; and

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year) (whether classes were currently in session at the time)]]; and

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of the [(time of day) (time of year) (whether classes were currently in session at the time)]]; and

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)]; and

[or]

[5] in residential property owned, operated, and managed by a public housing agency; and

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency; and

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency; and

[or]

[8] in a public park; and

[or]

[9] on the real property comprising a public park; and

[or]

[10] on a public way within 1000 feet of the real property comprising a public park; and

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship; and

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship; and

*Third Proposition:* That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, § 1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 2, 1985, and amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997.

Give Instruction 17.19 and see Committee Note to that instruction.

Use the bracketed material regarding the time of day, time of year, or whether classes were currently in session at the time of the events in question for alternatives [1] through [3] only when the time of day, time of year, or whether classes were currently in session becomes a potential issue.

The bracketed numbers [1] through [12] under the opening paragraph and the Second Proposition correspond to the alternatives of the same number in Instruction 17.19, the definitional instruction for this offense. Select the corresponding alternatives under the opening paragraph and the Second Proposition that correspond to the alternative selected from the definitional instruction.

Use the bracketed Third Proposition and the bracketed language in the first paragraph regarding the weight of the substance when the jury must decide the weight of the substance.

This instruction does not include language for a look-alike substance offense charged under 720 ILCS 570/407(b)(3) (formerly Ill.Rev.Stat. ch. 561/2, § 1407(b)(3)).



(1991)) with 720 ILCS 570/404(b) (formerly Ill.Rev.Stat. ch. 561/2, § 1404(b) (1991)) as the predicate offense. For that offense, see Instruction 17.36.

See Committee Notes to Instructions to 17.01 and 17.18.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 17.21 Definition Of Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Age

A person commits the offense of delivery of a [(controlled) (counterfeit) (look-alike)] substance to a person under 18 years of age when he, being 18 years of age or older, knowingly delivers a [(substance containing a controlled) (substance containing a counterfeit) (look-alike)] substance to a person under 18 years of age [and the substance containing the [(controlled) (counterfeit)] substance weighs [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)]]].

#### Committee Note

720 ILCS 570/407(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1407(a)).

Give Instruction 17.22.

When delivery of more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); *People v. Hill*, 169 Ill.App.3d 901, 120 Ill.Dec. 574, 524 N.E.2d 604 (1st Dist.1988). When the jury must decide this element, use the final bracketed material in this instruction and use all four propositions in Instruction 17.22.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 24 Ill.Dec. 566, 385 N.E.2d 707 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See *People v. Cortez*, 77 Ill.App.3d 448, 32 Ill.Dec. 796, 395 N.E.2d 1177 (1st Dist.1979); *People v. Ziehm*, 120 Ill.App.3d 777, 76 Ill.Dec. 188, 458 N.E.2d 588 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 122 Ill.Dec. 64, 526 N.E.2d 204 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most delivery cases to add the phrase “. . . but less than \_\_\_\_\_ grams.” Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

Although Section 570/407(a) incorporates by reference violations of Sections 570/401 and 570/404(b), by its own specific language it is limited to acts of delivery and not other acts proscribed by those predicate Sections.

The Committee intentionally did not include the term “look-alike” in the bracketed material after the word “age” because weight is never an issue in look-alike cases.

See Committee Note to Instruction 17.19, regarding inconsistent amendments to the predicate offense, Section 570/401.

See Committee Note to Instruction 17.01, concerning verdict forms and for

directions on how the jury should be instructed when the weight of the substance is an issue.

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instructions 17.33A and 17.33B, defining the terms “counterfeit substance” and “look-alike substance” respectively.

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.



**17.22 Issues In Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Age**

To sustain the charge of delivery of a [(controlled) (counterfeit) (look-alike)] substance to a person under 18 years of age, the State must prove the following propositions:

*First Proposition:* That the defendant was 18 years of age or older on the date in question; and

*Second Proposition:* That the defendant knowingly delivered [(a substance containing \_\_\_\_\_, a controlled substance) (a counterfeit substance) (a look-alike substance)]; and

*Third Proposition:* That the person to whom the substance was delivered by the defendant was under 18 years of age on the date in question.

[or]

*Third Proposition:* That the person to whom the substance was delivered by the defendant was under 18 years of age on the date in question; and

*Fourth Proposition:* That the weight of the substance delivered was [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 570/407(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1407(a)).

Give Instruction 17.21.

The Fourth Proposition should not be given in a look-alike case because weight is not an issue.

See Committee Notes to Instructions 17.01, 17.19, and 17.18.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 17.23 Definition Of Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Use Of Youths In Commission Of Offense

A person commits the offense of delivery of a [(controlled) (counterfeit) (look-alike)] substance involving the use of another under 18 years of age when he, being 18 years of age or older, [(delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] a [(substance containing a controlled) (substance containing a counterfeit) (look-alike)] substance and, in so doing, [(uses) (engages) (employs)] a person under 18 years of age to deliver a [(substance containing a controlled) (substance containing a counterfeit) (look-alike)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)]]].

#### Committee Note

720 ILCS 570/407.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1407.1), added by P.A. 84-1475, effective February 5, 1987.

Give Instruction 17.24.

Give Instruction 17.33A, defining the term “counterfeit substance” when appropriate.

Give Instruction 17.33B, defining the term “look-alike substance” when appropriate.

When more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); *People v. Hill*, 169 Ill.App.3d 901, 120 Ill.Dec. 574, 524 N.E.2d 604 (1st Dist.1988). When the jury must decide this element, use the final bracketed material in this instruction and use all four propositions in Instruction 17.24.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 24 Ill.Dec. 566, 385 N.E.2d 707 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See *People v. Cortez*, 77 Ill.App.3d 448, 32 Ill.Dec. 796, 395 N.E.2d 1177 (1st Dist.1979); *People v. Ziehm*, 120 Ill.App.3d 777, 76 Ill.Dec. 188, 458 N.E.2d 588 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 122 Ill.Dec. 64, 526 N.E.2d 204 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most delivery cases to add the phrase “. . . but less than \_\_\_\_\_ grams.” Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

Although Section 570/407.1 incorporates by reference violations of Sections

570/401, 570/404, and 570/405, by its own specific language it is limited to acts of delivery and not other acts proscribed by those predicate Sections.

If the predicate offense is a calculated criminal drug conspiracy under Section 570/405, this instruction must be modified to conform to the language of the charging document.

The Committee intentionally did not include the term “look-alike” in the bracketed material after the word “age” because weight is never an issue in look-alike cases.

See Committee Note to Instruction 17.19, regarding inconsistent amendments to the predicate offense, Section 570/401.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.



## 17.24 Issues In Delivery Of Controlled, Counterfeit, Or Look-Alike Substance—Enhancing Factors Based Upon Use Of Youths In Commission Of Offense

To sustain the charge of delivery of a [(controlled) (counterfeit) (look-alike)] substance involving the use of another under 18 years of age, the State must prove the following propositions:

*First Proposition:* That the defendant was 18 years of age or older on the date in question; and

*Second Proposition:* That the defendant knowingly [(delivered) (manufactured) (possessed with intent to deliver) (possessed with intent to manufacture)] a [(substance containing \_\_\_\_\_, a controlled substance) (substance containing a counterfeit substance) (look-alike substance)]; and

*Third Proposition:* That the defendant [(used) (engaged) (employed)] a person under 18 years of age to deliver a [(controlled) (counterfeit) (look-alike)] substance.

[or]

*Third Proposition:* That the defendant [(used) (engaged) (employed)] a person under 18 years of age to deliver a [(controlled) (counterfeit) (look-alike)] substance; and

*Fourth Proposition:* That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 570/407.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1407.1), added by P.A. 84-1475, effective February 5, 1987.

Give Instruction 17.23.

The Fourth Proposition should not be given in a look-alike case because weight is not an issue.

See Committee Notes to Instructions 17.17, 17.18, and 17.20.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### **17.25 Definition Of Delivery Of Controlled Substance—Enhancing Factors Based Upon Pregnant Woman Recipient**

A person commits the offense of delivery of a controlled substance to a pregnant woman when he knowingly delivers a substance containing a controlled substance to a woman he knows to be pregnant [and the substance containing the controlled substance weighs [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)]]].

#### **Committee Note**

720 ILCS 570/407.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1407.2), added by P.A. 86-1459, effective January 1, 1991.

Give Instruction 17.26.

When delivery of more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); *People v. Hill*, 169 Ill.App.3d 901, 120 Ill.Dec. 574, 524 N.E.2d 604 (1st Dist.1988). When the jury must decide this issue, use the bracketed material in this instruction and use all three propositions in Instruction 17.26.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 24 Ill.Dec. 566, 385 N.E.2d 707 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant knew the quantity was of any specific amount. See *People v. Cortez*, 77 Ill.App.3d 448, 32 Ill.Dec. 796, 395 N.E.2d 1177 (1st Dist.1979); *People v. Ziehm*, 120 Ill.App.3d 777, 76 Ill.Dec. 188, 458 N.E.2d 588 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 122 Ill.Dec. 64, 526 N.E.2d 204 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most delivery cases to add the phrase “. . . but less than \_\_\_\_\_ grams.” Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

Although Section 570/407.2 incorporates by reference violations of Section 570/401, by its own specific language it is limited to acts of delivery and not other acts proscribed by the predicate section, and it is limited to controlled substances and not counterfeit substances.

See Committee Note to Instruction 17.19, regarding inconsistent amendments to the predicate offense, Section 570/401.

See Committee Note to Instruction 17.01 concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.



**17.26 Issues In Delivery Of Controlled Substance—Enhancing Factors Based Upon Pregnant Woman Recipient**

To sustain the charge of delivery of a controlled substance to a pregnant woman [when the substance containing the controlled substance weighed [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)]], the State must prove the following propositions:

*First Proposition:* That the defendant knowingly delivered a substance containing \_\_\_\_\_, a controlled substance; and

*Second Proposition:* That the person to whom the substance was delivered was known by the defendant to be pregnant on the date in question.

[or]

*Second Proposition:* That the person to whom the substance was delivered was known by the defendant to be pregnant on the date in question; and

*Third Proposition:* That the weight of the substance delivered was [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 570/407.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1407.2), added by P.A. 86-1459, effective January 1, 1991.

Give Instruction 17.25 and see the Committee Note to that instruction.

See Committee Notes to Instructions 17.01, 17.18, and 17.19.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

## 17.27 Definition Of Possession Of Controlled Or Counterfeit Substance

A person commits the offense of possession of a [(controlled) (counterfeit)] substance when he knowingly possesses a substance containing a [(controlled) (counterfeit)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)]]].

### Committee Note

720 ILCS 570/402 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1402). P.A. 86-266 and P.A. 86-442 contain identical language and are both effective January 1, 1990. These Acts repealed Section 1402.1 and merged those enhancing provisions into a new Section 1402. P.A. 86-604, also effective January 1, 1990, is basically identical to former Section 1402 with slight modifications to LSD provisions. The Committee takes no position on the legal effect of these inconsistencies. These Section 1402 instructions in this Third Edition are worded to accommodate all three Acts.

Give Instruction 17.28.

When possession of more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and becomes an essential element to be decided by the jury. See *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); *People v. Hill*, 169 Ill.App.3d 901, 120 Ill.Dec. 574, 524 N.E.2d 604 (1st Dist.1988). When the jury must decide this element, use the final bracketed material in this instruction and use both propositions in Instruction 17.28.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 24 Ill.Dec. 566, 385 N.E.2d 707 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant knew the quantity was of any specific amount. See *People v. Cortez*, 77 Ill.App.3d 448, 32 Ill.Dec. 796, 395 N.E.2d 1177 (1st Dist.1979); *People v. Ziehm*, 120 Ill.App.3d 777, 76 Ill.Dec. 188, 458 N.E.2d 588 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 122 Ill.Dec. 64, 526 N.E.2d 204 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most possession cases to add the phrase “. . . but less than \_\_\_\_\_ grams.” Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 570/402 an issue in the case.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

See Instructions 4.15 and 4.16, defining the word “possession.”

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.



**17.28 Issues In Possession Of Controlled Or Counterfeit Substance**

To sustain the charge of possession of a [(controlled) (counterfeit)] substance [when the substance containing the [(controlled) (counterfeit)] substance weighed [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly possessed a substance containing [(\_\_\_\_\_, a controlled substance) (a counterfeit substance)].

[or]

*First Proposition:* That the defendant knowingly possessed a substance containing [(\_\_\_\_\_, a controlled substance) (a counterfeit substance)]; and

*Second Proposition:* That the weight of the substance possessed was [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any one of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 570/402 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1402).

Give Instruction 17.27 and see Committee Note to that instruction.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**17.29 Definition Of Calculated Criminal Drug Conspiracy**

A person commits the offense of calculated criminal drug conspiracy when he knowingly \_\_\_\_\_

[1] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] \_\_\_\_\_ grams or more of a substance containing \_\_\_\_\_, a controlled substance;

[or]

[2] possesses \_\_\_\_\_ grams or more of a substance containing \_\_\_\_\_, a controlled substance;

[or]

[3] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] \_\_\_\_\_, a controlled substance;

and he does so as part of an agreement undertaken or carried on with two or more other persons; and

[1] he obtains anything of value greater than \$500 from the [(possession) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture)] or the agreement.

[or]

[2] he organizes, directs, or finances the [(possession) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture)] or the agreement.

**Committee Note**

720 ILCS 570/405 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1405).

Give Instruction 17.30.

Section 570/405 incorporates by reference subsections (a) and (c) of Section 1401 and subsection (a) of Section 1402. See the first paragraph to the Committee Notes to Instructions 17.17 and § 17.18 regarding inconsistent Public Acts effective January 1, 1990. The Committee takes no position on the legal effect of those acts on Section 570/405 cases.

For a decision concerning the evidence required to prove a calculated criminal drug conspiracy, see *People v. Harmison*, 108 Ill.2d 197, 91 Ill.Dec. 162, 483 N.E.2d 508 (1985).

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instruction 17.13A, regarding the word “agreement.”

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel

and should not be included in the instruction submitted to the jury.



**17.30 Issues In Calculated Criminal Drug Conspiracy**

To sustain the charge of calculated criminal drug conspiracy, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] \_\_\_\_\_ grams or more of a substance containing \_\_\_\_\_, a controlled substance; and

[or]

*First Proposition:* That the defendant knowingly possessed \_\_\_\_\_ grams or more of a substance containing \_\_\_\_\_, a controlled substance; and

[or]

*First Proposition:* That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] \_\_\_\_\_, a controlled substance; and

*Second Proposition:* That the defendant did so as part of an agreement undertaken or carried on with two or more other persons; and

*Third Proposition:* That the defendant obtained something of value greater than \$500 from such [(possession) (manufacture) (delivery) (possession with intent to manufacture) (possession with intent to deliver)] or agreement.

[or]

*Third Proposition:* That the defendant organized, directed, or financed such [(possession) (manufacture) (delivery) (possession with intent to manufacture) (possession with intent to deliver)] or agreement.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 570/405 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1405).

Give Instruction 17.29 and see the accompanying Committee Note.

The Committee cautions against using normal principles of accountability. The defendant himself must receive the benefit or perform the acts contained in either of the Third Propositions, see *People v. Holmes*, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist.1976), but there is no clear answer to the question of whether the defendant himself must have performed the acts in the First Proposition. See *People v. Vincent*, 92 Ill.App.3d 446, 47 Ill.Dec. 834, 415 N.E.2d 1147 (1st Dist.1980).

See Committee Note to Instruction 17.01, concerning verdict forms and for

directions on how the jury should be instructed when the weight of the substance is an issue.

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

**17.31 Definition Of Criminal Drug Conspiracy**

A person commits the offense of criminal drug conspiracy when he, with the intent that the offense of \_\_\_\_\_ be committed, agrees with [(another) (others)] to the commission of the offense of \_\_\_\_\_, and an act in furtherance of the agreement is performed by any party to the agreement.

To constitute the offense of criminal drug conspiracy it is not necessary that the conspirators succeed in committing the offense of \_\_\_\_\_.

**Committee Note**

720 ILCS 570/405.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1405.1), added by P.A. 86-809, effective January 1, 1990.

The court must also give an instruction that defines the drug offense that is the alleged subject of the criminal drug conspiracy. See Committee Notes to that drug definition instruction and to Instruction 6.03 generally regarding conspiracy principles.

P.A. 86-809 is worded in general conspiracy language from 720 ILCS 5/8-2, but it is limited to agreements to commit a violation of 720 ILCS 570/401, 570/402, or 570/407.

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instruction 17.13A, regarding the word “agreement.”

Insert in the blanks the name of the offense that is the subject of the alleged criminal drug conspiracy.

Use applicable bracketed material.



### 17.32 Issues In Criminal Drug Conspiracy

To sustain the charge of criminal drug conspiracy, the State must prove the following propositions:

*First Proposition:* That the defendant agreed with \_\_\_\_\_ to the commission of the offense of \_\_\_\_\_; and

*Second Proposition:* That the defendant did so with the intent that the offense of \_\_\_\_\_ be committed; and

*Third Proposition:* That an act in furtherance of the agreement was performed by any party to the agreement.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 570/405.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1405.1), added by P.A. 86-809, effective January 1, 1990.

Give Instruction 17.31.

The court must also give an instruction that defines the drug offense that is the alleged subject of the criminal drug conspiracy. See Committee Notes to that drug definition instruction and to Instruction 6.03 generally regarding conspiracy principles.

P.A. 86-809 is worded in general conspiracy language from 720 ILCS 5/8-2, but it is limited to agreements to commit a violation of 720 ILCS 570/401, 570/402, or 570/407.

Insert in the blanks the name of the offense that is the subject of the alleged criminal drug conspiracy.

**17.33 Definition Of Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance**

A person commits the offense of [(manufacturing) (distributing) (advertising) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance when he knowingly [(manufactures) (distributes) (advertises) (possesses with intent to manufacture) (possesses with intent to distribute)] a look-alike substance.

[It is not a defense to the charge of [(manufacturing) (distributing) (advertising) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance that the defendant believed the look-alike substance actually to be a controlled substance.]

**Committee Note**

720 ILCS 570/404(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1404(b)).

Give Instruction 17.34.

Give Instruction 17.33B, defining the term “look-alike substance.”

The bracketed paragraph is based on Section 570/404(d) and should be given if there is some evidence or argument before the jury concerning the defendant’s belief that the look-alike substance actually was a controlled substance. See *People v. Upton*, 151 Ill.App.3d 1075, 105 Ill.Dec. 96, 503 N.E.2d 1102 (5th Dist.1987).

See Instructions 4.15 and 4.16, defining the word “possession.”

See Section 570/102(r), defining the word “distribute.”

**17.33A Definition Of Counterfeit Substance**

The term “counterfeit substance” means a controlled substance, which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

**Committee Note**

720 ILCS 570/102(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1102(g)).

If the word “person” is an issue, prepare a definition from Section 570/102(gg), and do *not* use Instruction 4.10.



**17.33B Definition Of Look-Alike Substance**

The term “look-alike substance” means

[1] a substance, other than a controlled substance, which by overall dosage unit appearance, including shape, color, size, markings or lack thereof, taste, consistency, or any other identifying physical characteristics of the substance, would lead a reasonable person to believe that the substance is a controlled substance.

[or]

[2] a substance, other than a controlled substance, which is expressly or impliedly represented to be a controlled substance or is distributed under circumstances which would lead a reasonable person to believe that the substance is a controlled substance. In determining whether a substance has been so represented or distributed you should consider all relevant factors[, including

[a] statements made by the owner or person in control of the substance concerning its nature, use or effect

[b] statements made to the buyer or recipient that the substance may be resold for profit

[c] whether the substance is packaged in a manner normally used for the illegal distribution of controlled substances

[d] whether the distribution or attempted distribution included an exchange of or demand for money or other property in return for the substance, and whether the value of the money or property was substantially greater than the reasonable retail market value of the substance].

A controlled substance is an illegal drug which it is unlawful to possess, manufacture, or deliver under the Illinois Controlled Substance Act. [\_\_\_\_\_] [(is a) (are)] controlled substance[s].]

**Committee Note**

720 ILCS 570/102(y) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1102(y)).

The statutory definition of a look-alike substance contains a number of exceptions which are not included in this instruction. (Section 570/102(y).) When the evidence shows that those statutory exceptions are at issue, this instruction must be modified.

Insert in the blank the names of any controlled substance or substances which the look-alike drug is said to resemble.

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**17.34 Issues In Manufacture, Distribution, Advertisement Of Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance**

To sustain the charge of [(manufacture of) (distribution of) (advertisement of) (possession of) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance, the State must prove the following proposition:

That the defendant knowingly [(manufactured) (distributed) (advertised) (possessed) (possessed with intent to manufacture) (possessed with intent to distribute)] a look-alike substance.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 570/404 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1404).

Give Instructions 17.33 and 17.33B.

Separate issues and definitional instructions may have to be given, along with separate verdict forms, if the jury is to consider more than one charge under Section 570/404.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**17.35 Definition Of Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance—Enhancing Factors Based Upon Location**

A person commits the offense of [(manufacturing) (distributing) (advertising) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance when he knowingly [(manufactures) (distributes) (advertises) (possesses with intent to manufacture) (possesses with intent to deliver)] a look-alike substance while

[1] in a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]]].

[or]

[2] on the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time) ]].

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school-related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] on the real property comprising a church, synagogue, or other building,



structure, or place used primarily for religious worship.

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

#### Committee Note

720 ILCS 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, § 1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 1, 1985; and amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997. This Section incorporates by reference 720 ILCS 570/404(b) (West, 1992) (formerly Ill.Rev. Stat. ch. 561/2, § 1404(b) (1991)).

Give Instruction 17.36.

Give Instruction 17.33B, defining the term “look-alike substance.”

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] through [3] only when the time of day or time of year becomes a potential issue.

The bracketed numbers [1] through [12] correspond to the locations indicated in Section 407(b) as enhancing factors. Select the alternative that corresponds to the location in the charge.

When the prosecution must prove one of the enhancing factors based upon location as an element of the offense, it need not prove that the defendant knew he was at such a location. *People v. Brooks*, 271 Ill.App.3d 570, 573, 207 Ill.Dec. 926, 928, 648 N.E.2d 626, 628 (4th Dist. 1995).

See Instructions 4.15 and 4.16, defining the word “possession.”

For a case involving the relationship between the predicate offense and the enhanced offense under Section 407(b), see *People v. Lipscomb*, 173 Ill.App.3d 416, 123 Ill.Dec. 241, 527 N.E.2d 704 (4th Dist.1988).

Use applicable bracketed material.

**17.36 Issues In Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance—Enhancing Factors Based Upon Location**

To sustain the charge of [(manufacture of) (distribution of) (advertisement of) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance while:

[1] in a school, the State must prove the following propositions:

[or]

[2] on the real property comprising a school, the State must prove the following propositions:

[or]

[3] on a public way within 1000 feet of the real property comprising a school, the State must prove the following propositions:

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school-related activity)], the State must prove the following propositions:

[or]

[5] in residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[8] in a public park, the State must prove the following propositions:

[or]

[9] on the real property comprising a public park, the State must prove the following propositions:

[or]

[10] on a public way within 1000 feet of the real property comprising a public park, the State must prove the following propositions:

[or]

[11] on the real property comprising a church, synagogue, or other building,

structure, or place used primarily for religious worship, the State must prove the following propositions:

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(manufactured) (distributed) (advertised) (possessed with intent to manufacture) (possessed with intent to distribute)] a look-alike substance; and

*Second Proposition:* That the [(manufacture) (distribution) (advertisement) (possession with intent to manufacture) (possession with intent to distribute)] took place while

[1] in a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]]].

[or]

[2] on the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time) ]].

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.



[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev. Stat. ch. 561/2, § 1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 1, 1985; and amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997. This Section incorporates by reference 720 ILCS 570/404(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, § 1404(b) (1991)).

Give Instruction 17.35.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] through [3] only when the time of day or time of year becomes a potential issue.

The bracketed numbers [1] through [12] under the opening paragraph and the Second Proposition correspond to the alternatives of the same number in Instruction 17.35, the definitional instruction for this offense. Select the corresponding alternatives under the opening paragraph and the Second Proposition that correspond to the alternative selected from the definitional instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**17.37 Definition Of Possession Of Hypodermic Syringe Or Needle**

A person commits the offense of possession of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)] when he knowingly has in his possession [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)].

**Committee Note**

720 ILCS 635/1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 22-50).

Give Instruction 17.38.

Use applicable bracketed material.

**17.38 Issues In Possession Of Hypodermic Syringe Or Needle**

To sustain the charge of possession of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)], the State must prove the following proposition:

That the defendant knowingly had in his possession [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)]

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 635/1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 22-50).

Give Instruction 17.37.

Note that Sections 635/1 and 635/5 contain exceptions.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**17.39 Definition Of Delivery, Sale, Or Exchange Of Hypodermic Syringe Or Needle**

A person commits the offense of [(delivery) (sale) (exchange)] of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)] when he knowingly [(delivers) (sells) (exchanges)] [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of controlled substance or cannabis by subcutaneous injection)] [(to) (with)] any person.

**Committee Note**

720 ILCS 635/2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 22-51).

Give Instruction 17.40.

Instruction 17.22, defining the offense of subsequent offense of possession, delivery, sale, or exchange of hypodermic syringe or needle, has been eliminated because of the infrequency with which that charge would be made.

See Committee Note to Instruction 17.05A if delivery is an issue.

Use applicable bracketed material.

**17.40 Issues In Delivery, Sale, Or Exchange Of Hypodermic Syringe Or Needle**

To sustain the charge of [(delivery) (sale) (exchange)] of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)], the State must prove the following proposition:

That the defendant knowingly [(delivered) (sold) (exchanged)] [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)] [(to) (with)] another person.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 635/2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 22-51).

Give Instruction 17.39.

Note that Sections 635/2 and 635/5 contain exceptions.

Instruction 17.23, issues in the offense of subsequent offense of possession, delivery, sale, or exchange of hypodermic syringe or needle, has been eliminated because of the infrequency with which that charge would be made.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in the proposition. See Instruction 5.03.

**17.41 Definition Of Permitting Unlawful Use Of A Building**

A person commits the offense of permitting unlawful use of a building when he controls a building and knowingly grants, permits, or makes that building available for use for the purpose of unlawfully manufacturing or delivering a controlled substance.

Control of a building means the power or authority to direct, restrict, or regulate the use of the building.

**Committee Note**

720 ILCS 570/406.1 (West, 1999) formerly Ill.Rev.Stat. ch. 561/2, § 1406.1, added by P.A. 85-537, effective January 1, 1988.

Give Instruction 17.42.

For a discussion of the definition of "control," see *People v. Parker*, 277 Ill.App.3d 585, 214 Ill.Dec. 347, 660 N.E.2d 1296 (4th Dist.1996).



**17.41A Definition Of Use Of A Dangerous Place For The Commission Of A Controlled Substance Or Cannabis Offense**

A person commits the offense of Use of a Dangerous Place for the Commission of a [(Controlled Substance) (Cannabis)] Offense when that person knowingly exercises control over any place with the intent to use that place to [(manufacture) (produce) (deliver) (possess with intent to deliver)] a [(controlled substance) (counterfeit substance) (controlled substance analog) (cannabis)]; and

[1] the place, by virtue of the presence of the [(substance) (substances)] [(used) (intended to be used)] to manufacture [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] presents a substantial risk of injury to any person from [(fire) (explosion) (exposure to toxic or noxious chemicals or gas)]

[or]

[2] the place [(used) (intended to be used)] to [(manufacture) (produce) (deliver) (possess with intent to deliver)] [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] has located [(within) (surrounding)] it [(devices) (weapons) (chemicals) (explosives)] [(designed) (hidden) (arranged)] in a manner that would cause a person to be exposed to a substantial risk of great bodily harm.

**Committee Note**

Chapter 720 ILCS 5/12-2.6, added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.42A, 17.43E, and 17.43F.

Use applicable bracketed material.

Give Instruction 17.33A, defining the term “counterfeit substance”, as appropriate.

The bracketed numbers and the brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**17.42 Issues In Permitting Unlawful Use Of A Building**

To sustain the charge of permitting unlawful use of a building, the State must prove the following propositions:

*First Proposition:* That the defendant controlled a building; and

*Second Proposition:* That the defendant knowingly granted, permitted, or made that building available for use for the purpose of unlawfully manufacturing or delivering a controlled substance.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 570/406.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1406.1), added by P.A. 85-537, effective January 1, 1988.

Give Instruction 17.41.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**17.42A Issues In Use Of A Dangerous Place For The Commission Of A Controlled Substance Or Cannabis Offense**

To sustain the charge of Use of a Dangerous Place for the Commission of a [(Controlled Substance) (Cannabis)] Offense, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly exercised control over any place with the intent to use that place to [(manufacture) (produce) (deliver) (possess with intent to deliver)] a [(controlled substance) (counterfeit substance) (controlled substance analog) (cannabis)]; and

*Second Proposition:* That the place

by virtue of the presence of the [(substance) (substances)] [(used) (intended to be used)] to manufacture [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] presents a substantial risk of injury to any person from [(fire) (explosion) (exposure to toxic or noxious chemicals or gas)];

[or]

*Second Proposition:* That the place

[(used) (intended to be used)] to [(manufacture) (produce) (deliver) (possess with intent to deliver)] [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] has located [(within) (surrounding)] it [(devices) (weapons) (chemicals) (explosives)] [(designed) (hidden) (arranged)] in a manner that would cause a person to be exposed to a substantial risk of great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

Chapter 720 ILCS 5/12-2.6, added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.41A, 17.43E, and 17.43F.

Use applicable paragraphs and bracketed material.

Give Instruction 17.33A, defining the term “counterfeit substance”, as appropriate.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



### 17.43 Definition Of Money Laundering

A person commits the offense of money laundering when he knowingly engages or attempts to engage in a financial transaction in criminally derived property [(of a value exceeding \$10,000 but not exceeding \$100,000) (of a value exceeding \$100,000)] [(with the intent to promote the carrying on of the unlawful activity from which the criminally derived property was obtained) (where he knows or reasonably should know that the financial transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the criminally derived property)].

#### Committee Note

720 ILCS 5/29B-1(a) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, § 29B-1(a) (1991)); added by P.A. 85-675, effective January 1, 1988; amended by P.A. 86-1459, effective January 1, 1991; P.A. 88-258, effective August 9, 1993.

Give Instruction 17.44.

Give Instructions 17.43A, 17.43B, 17.43C, and 17.43D, defining the terms “financial transaction”, “financial institution”, “monetary instrument”, and “criminally derived property” respectively, as applicable.

Between January 1, 1988, and January 1, 1991, money laundering was a Class 3 felony regardless of the value of the property alleged to be criminally derived. After January 1, 1991, if the value exceeds \$10,000 but not \$100,000, the offense is a Class 2 felony; and, if it exceeds \$100,000, the offense is a Class 1 felony. Because the value now determines the penalty, when laundering property exceeding \$10,000 in value is charged, the Committee believes value is an essential element to be decided by the jury similar to substance weight in *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974), and *People v. Hill*, 169 Ill.App.3d 901, 120 Ill.Dec. 574, 524 N.E.2d 604 (1st Dist.1988). See also *People v. Harden*, 42 Ill.2d 301, 247 N.E.2d 404 (1969); but see, *People v. Jackson*, 99 Ill.2d 476, 77 Ill.Dec. 113, 459 N.E.2d 1362 (1984). When the jury must decide this element, use the first bracketed material in this instruction and use all four propositions in Instruction 17.44.

Particular care must be taken with instructions and verdict forms when disputes about value support lesser included offenses. See an example regarding weight rather than value in the Committee Note to Instruction 17.01.

Use applicable bracketed material.

**17.43A Definition Of Financial Transaction**

The term “financial transaction” means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition utilizing criminally derived property[, and with respect to financial institutions, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument or any other payment, transfer or delivery by, through, or to a financial institution]. [The receipt by an attorney of bona fide fees for the purpose of legal representation is not a financial transaction.]

**Committee Note**

720 ILCS 5/29B-1(b)(1) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 29B-1(b)(1) (1991)); amended by P.A. 88-258, effective August 9, 1993.

Use applicable bracketed material.

**17.43B Definition Of Financial Institution**

The term "financial institution" means any bank; saving and loan association; trust company; agency or branch of a foreign bank in the United States; currency exchange; credit union; mortgage banking institution; pawnbroker; loan or finance company; operator of a credit card system; issuer, redeemer, or cashier of travelers checks, checks, or money orders; dealer in precious metals, stones, or jewels; broker or dealer in securities or commodities; investment banker; or investment company.

**Committee Note**

720 ILCS 5/29B-1(b)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 29B-1(b)(2) (1991)).



**17.43C Definition Of Monetary Instrument**

The term “monetary instrument” means United States coins and currency; coins and currency of a foreign country; travelers checks; bearer negotiable instruments; bearer investment securities; or bearer securities and certificates of stock.

**Committee Note**

720 ILCS 5/29B-1(b)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 29B-1(b)(3) (1991)).

**17.43D Definition Of Criminally Derived Property**

The term “criminally derived property” means any property constituting or derived from proceeds obtained, directly or indirectly, pursuant to the commission of \_\_\_\_\_.

**Committee Note**

720 ILCS 5/29B-1(b)(4) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 29B-1(b)(4) (1991)).

The Committee recommends that, at the request of either party, or *sua sponte*, the court submit to the jury a definitional instruction for each violation.

Insert in the blank the offense or offenses from the Criminal Code of 1961, the Illinois Controlled Substance Act, or the Cannabis Control Act involved in the money laundering case before the jury.

**17.43E Definition Of Place**

The word “place” means a premises, conveyance, or location that offers [(seclusion) (shelter) (means) (facilitation)] for manufacturing, producing, possessing or possessing with intent to deliver [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)].

**Committee Note**

Chapter 720 ILCS 5/12-2.6, added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.41A, 17.42A and 17.43F.

Use applicable bracketed material.

The Committee points out that the statute uses the word “premise” instead of “premises.” However, upon inquiry, the Committee determined that the word used in the statute was a grammatically incorrect drafting error and that, in an upcoming revisory statute, the word will be corrected to read “premises.”

Give Instruction 17.33A, defining the term “counterfeit substance”, as appropriate.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**17.43F Inferences On Intended Use Of A Place**

You may infer that a place was intended to be used to manufacture a [(controlled substance) (counterfeit substance) (controlled substance analog)] if a substance containing a [(controlled substance) (counterfeit substance) (controlled substance analog)] or a substance containing a chemical important to the manufacture of said substance is found at the place of the alleged illegal controlled substance manufacturing in close proximity to equipment or to a chemical used for facilitating the manufacture of said substance.

You never are required to make this inference. It is for the jury to determine whether the inference should be drawn. You should consider all of the evidence in determining whether a place was intended to be used to manufacture a [(controlled substance) (counterfeit substance) (controlled substance analog)].

**Committee Note**

Chapter 720 ILCS 5/12-2.6(b), added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.41A, 17.42A, and 17.43E.

Use applicable bracketed material.

Give Instruction 17.33A, defining the term “counterfeit substance,” as appropriate.

The Committee points out that this Instruction permits a jury to make the inference herein but that such an inference is permissive, not mandatory. *People v. Pomykala*, 203 Ill.2d 198, 271 Ill.Dec 230, 784 N.E.2d 784 (2003) and *People v. Funches*, 212 Ill.2d 334, 288 Ill.Dec. 654, 818 N.E.2d 342 (2004). Mandatory presumptions are *per se* unconstitutional in Illinois. *People v. Watts*, 181 Ill.2d 133, 229 Ill.Dec. 542, 692 N.E.2d 315 (1998). Consistent with the above Illinois Supreme Court decisions, the Committee drafted the second paragraph of this instruction, using IPI 23.30 (Presumptions of Being Under the Influence of Alcohol) as a model.

The statute does not include cannabis when providing for this inference at 720 ILCS 5/12-2.6(b) and, therefore, cannabis is not included in this Instruction.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**17.44 Issues In Money Laundering**

To sustain the charge of money laundering, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly engaged or attempted to engage in a financial transaction in criminally derived property; and

*Second Proposition:* That when the defendant did so, he [(intended to promote the carrying on of the unlawful activity from which the criminally derived property was obtained) (knew or reasonably should have known that the financial transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the criminally derived property)] [(.) (; and)]

*[Third Proposition:* That the value of the criminally derived property exceeded [(\$10,000 but did not exceed \$100,000) (\$100,000)].]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/29B-1(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 29B-1(a) (1991)); added by P.A. 85-675, effective January 1, 1988; amended by P.A. 86-1459, effective January 1, 1991; P.A. 88-258, effective August 9, 1993.

Give Instruction 17.43.

Give the bracketed Third Proposition if property of a value exceeding \$10,000 is at issue.

See the Committee Note to Instruction 17.43.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

## 17.45 Definition Of Controlled Substances Trafficking

A person commits the offense of controlled substances trafficking when he knowingly [(brings) (causes to be brought)] into this State a [(controlled) (counterfeit)] substance [(for the purpose of [(the manufacture of) (the delivery of)]] (with the intent to [(manufacture) (deliver)]]] a [(controlled) (counterfeit)] substance in this or any other state or country [and the substance containing the [(controlled) (counterfeit)] substance weighed [(\_\_\_\_\_ grams or more) (\_\_\_\_\_ grams or more but less than \_\_\_\_\_ grams)]]].

### Committee Note

720 ILCS 570/401.1(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1401.1(a) and (b)), added by P.A. 85-743, effective September 22, 1987, and amended by P.A. 85-1294, effective January 1, 1989, and P.A. 86-1391, effective January 1, 1991.

Give Instruction 17.46.

If the use of a cellular radio telecommunications device in trafficking is alleged, do not use this instruction; instead, use Instructions 17.47 and 17.48.

When more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); *People v. Hill*, 169 Ill.App.3d 901, 120 Ill.Dec. 574, 524 N.E.2d 604 (1st Dist.1988). When the jury must decide this element, use the final bracketed material in this instruction and use all three propositions in Instruction 17.46.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 24 Ill.Dec. 566, 385 N.E.2d 707 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See *People v. Cortez*, 77 Ill.App.3d 448, 32 Ill.Dec. 796, 395 N.E.2d 1177 (1st Dist.1979); *People v. Ziehm*, 120 Ill.App.3d 777, 76 Ill.Dec. 188, 458 N.E.2d 588 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 122 Ill.Dec. 64, 526 N.E.2d 204 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most possession cases to add the phrase “. . . but less than \_\_\_\_\_ grams.” Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

See Committee Note to Instruction 17.17, regarding inconsistent amendments to Section 570/410, effective January 1, 1991.

See Committee Note to Instruction 17.01, concerning verdict forms and for



directions on how the jury should be instructed when the weight of the substance is in dispute.

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see the definitions in Chapter 720.

Use applicable bracketed material.

### 17.46 Issues In Controlled Substances Trafficking

To sustain the charge of controlled substances trafficking, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(brought) (caused to be brought)] into this State [(\_\_\_\_\_, a controlled) (a counterfeit)] substance; and

*Second Proposition:* That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the [(controlled) (counterfeit)] substance in this or any other state or country.

[or]

*Second Proposition:* That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the [(controlled) (counterfeit)] substance in this or any other state or country; and

*Third Proposition:* That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(\_\_\_\_\_, grams or more) (\_\_\_\_\_, grams or more but less than \_\_\_\_\_ grams)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 570/401.1(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1401.1(a) and (b)), added by P.A. 85-743, effective September 22, 1987, and amended by P.A. 85-1294, effective January 1, 1989.

Give Instruction 17.45 and see Committee Note to that instruction.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**17.47 Definition Of Controlled Substances Trafficking—Use Of A Cellular Radio Telecommunications Device**

A person commits the offense of controlled substances trafficking involving the use of a cellular radio telecommunications device when he knowingly [(brings) (causes to be brought)] into this State a [(controlled) (counterfeit)] substance [(for the purpose of [(the manufacture of) (the delivery of)]] (with the intent to [(manufacture) (deliver)])] a [(controlled) (counterfeit)] substance in this or any other state or country and he knowingly uses a cellular radio telecommunications device in the furtherance of this activity.

**Committee Note**

720 ILCS 570/401.1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1401.1(c)), added by P.A. 86-1391, effective January 1, 1991.

Give Instruction 17.48.

If the use of a cellular radio telecommunications device in controlled substance trafficking is alleged, use this instruction and 17.48, and do not use Instructions 17.45 and 17.46 for that charge.

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see definitions in Chapter 720.

Use applicable bracketed material.



**17.48 Issues In Controlled Substances Trafficking—Use Of A Cellular Radio Telecommunications Device**

To sustain the charge of controlled substances trafficking involving use of a cellular radio telecommunications device, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(brought) (caused to be brought)] into this State [(\_\_\_\_\_, a controlled) (a counterfeit)] substance; and

*Second Proposition:* That the defendant knowingly used a cellular radio telecommunications device in the furtherance of that activity; and

*Third Proposition:* That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the [(controlled) (counterfeit)] substance in this or any other state or country.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 570/401.1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 1401.1(c)), added by P.A. 86-1391, effective January 1, 1991.

Give Instruction 17.47.

Insert in the blank the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**17.49 Definition Of Unlawful Transfer Of A Telecommunications Device To A Minor**

A person commits the offense of unlawful transfer of a telecommunications device to a minor when he gives, sells, or otherwise transfers possession of a telecommunications device to a person under 18 years of age with the intent that the device be used to commit the offense of \_\_\_\_\_.

**Committee Note**

720 ILCS 5/44-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 44-2 (1991)), added by P.A. 86-811, effective January 1, 1990.

Give Instructions 17.49A and 17.50.

The statute refers to “any offense under this [the Criminal] Code, the Cannabis Control Act or the Illinois Controlled Substances Act.” The Committee believes that whether the offense or offenses in question is “under” any of these three Codes is a question of law for the court to resolve. Accordingly, if the court has determined that offense or offenses in question is under any of these three Codes, then the jury should simply be given this general instruction, referring to “offense” without further qualification.

Insert in the blank the offense named in the information or indictment, and give the instruction defining that offense.

**17.49A Definition Of Telecommunications Device**

The term "telecommunications device" means a device which is portable or which may be installed in a motor vehicle, boat, or other means of transportation, and which is capable of receiving or transmitting speech, data, signals, or other information, including but not limited to paging devices, cellular and mobile telephones, and radio transceivers, transmitters, and receivers, but not including radios designed to receive only standard AM and FM broadcasts.

**Committee Note**

720 ILCS 5/44-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 44-1 (1991)), added by P.A. 86-811, effective January 1, 1990.



**17.50 Issues In Unlawful Transfer Of A Telecommunications Device To A Minor**

To sustain the charge of unlawful transfer of a telecommunications device to a minor, the State must prove the following propositions:

*First Proposition:* That the defendant gave, sold, or otherwise transferred possession of a telecommunications device to another person; and

*Second Proposition:* That this other person was then under 18 years of age; and

*Third Proposition:* That the defendant did so with the intent that this other person use the device to commit the offense of \_\_\_\_\_.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/44-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 44-2 (1991)), added by P.A. 86-811, effective January 1, 1990.

Give Instructions 17.49 and 17.49A.

See Committee Note to Instruction 17.49.

Insert in the blank the offense named in the information or indictment.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

17.51-17.56 Reserved

**17.57 Definition Of Sale Of Drug Paraphernalia**

A person commits the offense of sale of drug paraphernalia when he knowingly [(keeps for sale) (offers for sale) (sells) (delivers for any commercial consideration)] any item of drug paraphernalia.

**Committee Note**

720 ILCS 600/3(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 561/2, § 2103(a) (1991)).

Give Instruction 17.58.

Give Instruction 17.57A, defining the term “drug paraphernalia.”

Give Instruction 17.67, defining “inference of legitimacy.”

Note that 720 ILCS 600/4 contains exemptions.

Use applicable bracketed material.

**17.57A Definition Of Drug Paraphernalia**

The term “drug paraphernalia” means all equipment, products and materials of any kind which are peculiar to and marketed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body cannabis or a controlled substance.

[This term includes, but is not limited to, \_\_\_\_\_.]

**Committee Note**

720 ILCS 600/2 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 2102).

Note that Section 600/4, contains exemptions.

Insert in the blank, when appropriate, an example of an item of drug paraphernalia specifically found in paragraphs (1) through (6) of 720 ILCS 600/1(d).

Use bracketed material when appropriate.



**17.58 Issues In Sale Of Drug Paraphernalia**

To sustain the charge of sale of drug paraphernalia, the State must prove the following proposition:

That the defendant knowingly [(kept for sale) (offered for sale) (sold) (delivered for any commercial consideration)] any item of drug paraphernalia.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 600/3 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 2103).

Give Instruction 17.57.

Note that Section 600/4, contains exemptions.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in the proposition. See Instruction 5.03.

### 17.59 Definition Of Sale Of Drug Paraphernalia To A Person Under 18 Years Of Age

A person commits the offense of sale of drug paraphernalia to a person under 18 years of age when he is 18 years of age or older and knowingly [(sells) (delivers for any commercial consideration) ] any item of drug paraphernalia to a person under 18 years of age.

#### Committee Note

720 ILCS 600/3(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 561/2, § 2103(a) (1991)).

Give Instruction 17.60.

Give Instruction 17.57A, defining the term “drug paraphernalia.”

Give Instruction 17.67, defining “inference of legitimacy.”

Note that 720 ILCS 600/4 contains exemptions.

Use applicable bracketed material.

**17.60 Issues In Sale Of Drug Paraphernalia To A Person Under 18 Years Of Age**

To sustain the charge of sale of drug paraphernalia to a person under 18 years of age, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(sold) (delivered for any commercial consideration)] any item of drug paraphernalia; and

*Second Proposition:* That the defendant was 18 years of age or older; and

*Third Proposition:* That the person to whom the item was [(sold) (delivered for any commercial consideration)] was under 18 years old at the time of the [(sale) (delivery)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 600/3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 2103(a)).

Give Instruction 17.59.

Note that Section 600/4, contains exemptions.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**17.61 Definition Of Sale Of Drug Paraphernalia To A Pregnant Woman**

A person commits the offense of sale of drug paraphernalia to a pregnant woman when he knowingly [(sells) (delivers for any commercial consideration)] any item of drug paraphernalia to a woman he knows to be pregnant.

**Committee Note**

720 ILCS 600/3(b) (West, 1994) (formerly Ill.Rev.Stat. ch. 561/2, § 2103(b) (1991)), added by P.A. 86-271, effective January 1, 1991.

Give Instruction 17.62.

Give Instruction 17.57A, defining the term “drug paraphernalia.”

Give Instruction 17.67, defining “inference of legitimacy.”

Note that 720 ILCS 600/4 contains exemptions.

Use applicable bracketed material.



**17.62 Issues In Sale Of Drug Paraphernalia To A Pregnant Woman**

To sustain the charge of sale of drug paraphernalia to a pregnant woman, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(sold) (delivered for any commercial consideration)] any item of drug paraphernalia; and

*Second Proposition:* That the person to whom the item was [(sold) (delivered for any commercial consideration)] was pregnant at the time of the [(sale) (delivery)]; and

*Third Proposition:* That the defendant knew the woman to be pregnant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 600/3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, § 2103(b)), added by P.A. 86-271, effective January 1, 1991.

Give Instruction 17.61.

Note that Section 600/4, contains exemptions.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 17.63 Definition Of Manufacture Or Delivery Of Cannabis—Enhancing Factor Based On Location On School Grounds

A person commits the offense of [(manufacture of) (delivery of) (possession with the intent to manufacture) (possession with the intent to deliver)] cannabis when he knowingly [(manufactures) (delivers) (possesses with the intent to manufacture) (possesses with the intent to deliver)] a substance containing cannabis [and the substance containing cannabis weighs [(more than \_\_\_\_\_ grams) (more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams)]] while

[1] in a school.

[or]

[2] on the real property comprising a school.

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] on a public way within 1000 feet of any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

#### Committee Note

720 ILCS 550/5.2 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, § 705.2 (1991)), added by P.A. 87-544, effective September 17, 1991.

Give Instruction 17.64.

Although Section 5.2 lists “Delivery of cannabis on school grounds” as a separate offense, it incorporates and refers to violations of 720 ILCS 550/5 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, § 705 (1991)) (manufacture or delivery of cannabis) and merely enhances the penalties one class higher whenever a violation of Section 5 occurs on school property. Thus, the Committee thought it better to treat Section 5.2 as an enhancing factor rather than a separate offense.

The bracketed numbers [1] through [5] correspond to the locations indicated in Section 5.2. Select the alternative that corresponds to the location in the charge.

In many cases, it will be necessary to give other instructions defining terms used in this instruction. See Instruction 17.05A, defining the word “deliver;” Instructions 4.15 and § 4.16, defining the word “possession;” and 720 ILCS 550/3(h) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, § 703(h) (1991)), defining the word “manufacture.”

When manufacture or delivery of more than 2.5 grams of a substance containing cannabis is charged, weight then determines the penalty for the offense and is an

essential element to be decided by the jury. See *People v. Hill*, 169 Ill.App.3d 901, 120 Ill.Dec. 574, 524 N.E.2d 604 (1st Dist.1988); *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974). This is accomplished by giving the bracketed material in this instruction and all three propositions in Instruction 17.64.

Particular care must be taken when disputes of weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 24 Ill.Dec. 566, 385 N.E.2d 707 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See *People v. Ziehm*, 120 Ill.App.3d 777, 76 Ill.Dec. 188, 458 N.E.2d 588 (2d Dist.1983); *People v. Cortez*, 77 Ill.App.3d 448, 32 Ill.Dec. 796, 395 N.E.2d 1177 (1st Dist.1979).

Although the quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 122 Ill.Dec. 64, 526 N.E.2d 204 (4th Dist.1988), the Committee recommends that, to ensure clarity, each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most manufacture and delivery cases to add the phrase “. . . but not more than \_\_\_\_\_ grams.” Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 550/5(b) through (d) an issue in the case.

See Committee Note to Instruction 17.05A if delivery is in dispute.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is in dispute.

If other terms used in this instruction need to be defined, see definitions contained in the Cannabis Control Act, 720 ILCS 550/1 *et seq.* Use applicable bracketed material.



### 17.64 Issues In Manufacture Or Delivery Of Cannabis—Enhancing Factor Based On Location On School Grounds

To sustain the charge of [(manufacture of) (delivery of) (possession with the intent to manufacture) (possession with the intent to deliver)] cannabis

[1] in a school, the State must prove the following propositions:

[or]

[2] on the real property comprising a school, the State must prove the following propositions:

[or]

[3] on a public way within 1000 feet of the real property comprising a school, the State must prove the following propositions:

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)], the State must prove the following propositions:

[or]

[5] on a public way within 1000 feet of any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)], the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(manufactured) (delivered) (possessed with the intent to manufacture) (possessed with the intent to deliver)] a substance containing cannabis; and

*Second Proposition:* That the [(manufacture) (delivery) (possession with the intent to manufacture) (possession with the intent to deliver)] took place while

[1] in a school; and

[or]

[2] on the real property comprising a school; and

[or]

[3] on a public way within 1000 feet of the real property comprising a school; and

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)]; and

[or]

[5] on a public way within 1000 feet of any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)]; and

*Third Proposition:* That the weight of the substance containing the cannabis was



[(more than \_\_\_\_\_ grams) (more than \_\_\_\_\_ grams but not more than \_\_\_\_\_ grams)]]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

#### Committee Note

720 ILCS 550/5.2 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, § 705.2 (1991)), added by P.A. 87-544, effective September 17, 1991.

Give Instruction 17.63 and see the Committee Note to that instruction.

The bracketed numbers [1] through [5] under the opening paragraph and the Second Proposition correspond to the alternatives of the same number in Instruction 17.63, the definitional instruction for this offense. Select the corresponding alternatives under the opening paragraph and the Second Proposition that correspond to the alternative selected from the definitional instruction.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is an issue.

When applicable, insert in the blanks the appropriate weight.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**17.65 Definition Of Possession Of Drug Paraphernalia**

A person commits the offense of possession of drug paraphernalia when he knowingly possesses an item of drug paraphernalia with the intent to use it [(in ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body) (in preparing [(cannabis) (a controlled substance)] for ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body)].

**Committee Note**

720 ILCS 600/3.5 (West, 1994), added by P.A. 88-677, effective December 15, 1994.

Give Instruction 17.66.

Give Instruction 17.57A, defining the term “drug paraphernalia.”

Give Instruction 17.67, defining “inference of legitimacy.”

Use applicable bracketed material.

**17.65A Definition Of Inference Of Legitimacy—Possession Or Sale Of Drug Paraphernalia**

The law prohibiting the [(possession) (sale)] of drug paraphernalia is intended to be used solely for suppressing the [(commercial traffic in) (possession of)] items that, within the context of [(the sale or offering for sale) (possession)], are clearly and beyond a reasonable doubt marketed for the illegal and unlawful use of cannabis or controlled substances. You should not find the defendant guilty unless the facts and circumstances proved exclude all reasonable and common-sense inferences that can be drawn in favor of the legitimacy of any [(transaction) (item)].

**Committee Note**

720 ILCS 600/6 (West, 1994), amended by P.A. 88-677, effective December 15, 1994.

Section 6 of the Act provides as follows:

“This Act is intended to be used solely for the suppression of the commercial traffic in and possession of items that, within the context of the sale or offering for sale, or possession, are clearly and beyond a reasonable doubt marketed for the illegal and unlawful use of cannabis or controlled substances. To this end, all reasonable and common-sense inferences shall be drawn in favor of the legitimacy of any transaction or item.”

Use applicable bracketed material.

**17.66 Issues In Possession Of Drug Paraphernalia**

To sustain the charge of possession of drug paraphernalia, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed an item of drug paraphernalia; and

*Second Proposition:* That when he did so, the defendant intended to use that item [(in ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body) (in preparing [(cannabis) (a controlled substance)] for ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 600/3.5 (West, 1994), added by P.A. 88-677, effective December 15, 1994.

Give Instruction 17.65.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**17.67 Definition Of Streetgang Criminal Drug Conspiracy**

A person commits the offense of streetgang criminal drug conspiracy when he knowingly

[1] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] \_\_\_\_\_ grams or more of a substance containing \_\_\_\_\_, a [(controlled) (counterfeit)] substance;

[or]

[2] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] \_\_\_\_\_, a [(controlled) (counterfeit)] substance;

and he does so in furtherance of the activities of an organized gang and as part of an agreement undertaken or carried out with two or more other persons; and he occupies a position of organizer, supervising person, or any other position of management over at least two or more of the same persons who were part of the agreement undertaken or carried out.

**Committee Note**

720 ILCS 570/405.2 (West, 1997), added by P.A. 89-498, effective June 27, 1996.

Give Instruction 17.66.

Section 405.2 incorporates by reference subsections (a) and (c) of Section 401 (720 ILCS 570/401 (West, 1997)). See the first paragraph to the Committee Notes to Instruction 17.17 regarding inconsistent Public Acts effective January 1, 1990. The Committee takes no position on the legal effect of those acts on Section 405.2.

If the definition of “organized gang” becomes an issue, use Instruction 4.30. See Section 720 ILCS 570/405.2(a)(iii) (West, 1997).

See Committee Note to Instruction 17.05A if delivery is an issue.

See Instruction 17.13A, regarding the term “agreement.”

See Committee Note to Instruction 17.01, concerning the verdict forms and for directions on how the jury should be instructed when the weight of the substance is an issue.

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**17.67A Definition Of Organized Gang**

The phrase “organized gang” means any combination, confederation, alliance, network, conspiracy, understanding or other similar conjoining, in law or fact, of three or more persons with an established hierarchy that, through its members or agents, engages in a course or pattern of criminal activity.

**Committee Note**

740 ILCS 147/10, amended by P.A. 88-467, effective July 1, 1994.

**17.68 Issues In Streetgang Criminal Drug Conspiracy**

To sustain the charge of streetgang criminal drug conspiracy, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] \_\_\_\_\_ grams or more of a substance containing \_\_\_\_\_, a [(controlled) (counterfeit)] substance; and

[or]

[2] *First Proposition:* That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] \_\_\_\_\_, a [(controlled) (counterfeit)] substance; and

*Second Proposition:* That the defendant did so in furtherance of the activities of an organized gang; and

*Third Proposition:* That the defendant did so as part of an agreement undertaken or carried out with two or more other persons; and

*Fourth Proposition:* That the defendant occupied a position of organizer, supervising person, or any other position of management over at least two or more of the same persons who were part of the agreement undertaken or carried out.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 570/405.2 (West, 1997), added by P.A. 89-498, effective June 27, 1996.

Give Instruction 17.65.

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

# Chapter 18.00

## WEAPONS

### SYNOPSIS

- 18.01 Definition Of Unlawful Use Of Weapons
- 18.01A Exemptions To Weapons Offenses
- 18.02 Issues In Unlawful Use Of Weapons
- 18.03 Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Silencer—Enhancing Factor Based Upon Location
- 18.03U Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Bludgeon, Sling-Shot, Metal Knuckles, Throwing Star, Switchblade, Or Ballistic Knife—Enhancing Factor Based Upon Location
- 18.03V Definition Of Aggravated Unlawful Use Of Weapons—Carrying Tear Gas Or Noxious Liquid Gas—Enhancing Factor Based Upon Location
- 18.03W Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Concealed Weapon—Enhancing Factor Based Upon Location
- 18.03X Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Rifle, Shotgun, Or Bomb—Enhancing Factor Based Upon Location
- 18.03XX Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Machine Gun—Enhancing Factors
- 18.03Y Definition Of Aggravated Unlawful Use Of Weapons—Concealing One's Identity—Enhancing Factor Based Upon Location
- 18.03Z Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Weapon On A Public Way Or Land Within City Limits—Enhancing Factor Based Upon Location
- 18.04 Issues In Aggravated Unlawful Use Of Weapons—Possessing A Silencer—Enhancing Factor Based Upon Location
- 18.04U Issues In Aggravated Unlawful Use Of Weapons—Possessing A Bludgeon, Sling-Shot, Metal Knuckles, Throwing Star, Switchblade, Or Ballistic Knife—Enhancing Factor Based Upon Location
- 18.04V Issues In Aggravated Unlawful Use Of Weapons—Carrying Tear Gas Or Noxious Liquid Gas—Enhancing Factor Based Upon Location
- 18.04W Issues In Aggravated Unlawful Use Of Weapons—Possessing A Concealed Weapon—Enhancing Factor Based Upon Location
- 18.04X Issues In Aggravated Unlawful Use Of Weapons—Possessing A Rifle, Shotgun, Or Bomb—Enhancing Factor Based Upon Location
- 18.04XX Issues In Aggravated Unlawful Use Of Weapons—Possessing A Machine Gun—Enhancing Factors



- 18.04Y Issues In Aggravated Unlawful Use Of Weapons—Concealing One's Identity—Enhancing Factor Based Upon Location
- 18.04Z Issues In Aggravated Unlawful Use Of Weapons—Possessing A Weapon On A Public Way Or Land Within City Limits—Enhancing Factor Based Upon Location
- 18.05 Definition Of Subsequent Offense Of Unlawful Use Of Weapons
- 18.06 Issues In Subsequent Offense Of Unlawful Use Of Weapons
- 18.07 Definition Of Unlawful Possession Of A Weapon By A Felon
- 18.07A Definition Of Firearm—Unlawful Possession Of A Weapon By A Felon
- 18.08 Issues In Unlawful Possession Of A Weapon By A Felon
- 18.09 Definition Of Unlawful Possession Of A Weapon By A Person In The Custody Of The Department Of Corrections Facilities
- 18.10 Issues In Unlawful Possession Of A Weapon By A Person In The Custody Of The Department Of Corrections Facilities
- 18.11 Definition Of Aggravated Discharge Of A Firearm—Discharge At A Person, Vehicle, Or Building
- 18.12 Issues In Aggravated Discharge Of A Firearm—Discharge At A Person, Vehicle, Or Building
- 18.13 Definition Of Aggravated Discharge Of A Firearm—Enhancing Factor Based On Status Of Victim
- 18.14 Issues In Aggravated Discharge Of A Firearm—Enhancing Factor Based On Status Of Victim
- 18.15 Definition Of Unlawful Sale Or Delivery Of Firearms
- 18.15X Definition Of Aggravated Unlawful Sale Of Firearms—Enhancing Factor Based Upon Location
- 18.16 Issues In Unlawful Sale Or Delivery Of Firearms
- 18.16X Issues In Aggravated Unlawful Sale Of Firearms—Enhancing Factor Based Upon Location
- 18.17 Definition Of Unlawful Possession Of Firearms And Firearm Ammunition
- 18.18 Issues In Unlawful Possession Of Firearms And Firearm Ammunition
- 18.19 Definition Of Unlawful Sale Or Delivery Of Firearms On School Or Public Housing Premises
- 18.20 Issues In Unlawful Sale Or Delivery Of Firearms On School Or Public Housing Premises
- 18.21 Definition Of Failure To Keep A Register Of Firearm Sales By Dealer
- 18.22 Issues In Failure To Keep A Register Of Firearm Sales By Dealer
- 18.23 Definition Of Defacing The Identification Marks Of Firearms
- 18.24 Issues In Defacing The Identification Marks Of Firearms
- 18.24A Interference Arising From Possession Of Altered Firearms
- 18.25 Definition Of Failure To Possess A Firearm Owner's Identification Card
- 18.26 Issues In Failure To Possess A Firearm Owner's Identification Card
- 18.27 Definition Of Unlawful Use Of Metal Piercing Bullets
- 18.28 Issues In Unlawful Use Of Metal Piercing Bullets

- 18.29 Definition Of Manufacture, Sale, Or Transfer Of Bullets Represented To Be Metal Piercing Bullets
- 18.30 Issues In Manufacture, Sale, Or Transfer Of Bullets Represented To Be Metal Piercing Bullets
- 18.31 Definition Of Unlawful Discharge Of Metal Piercing Bullets
- 18.32 Issues In Unlawful Discharge Of Metal Piercing Bullets
- 18.33 Definition Of Unlawful Possession Of A Concealed Metal Piercing Bullet And Firearm
- 18.34 Issues In Unlawful Possession Of A Concealed Metal Piercing Bullet And Firearm
- 18.35 Definition Of Ballistic Knife
- 18.35A Definition Of Switchblade Knife
- 18.35B Definition Of Explosive Bullet
- 18.35C Definition Of Cartridge
- 18.35D Definition Of Machine Gun
- 18.35E Definition Of Stun Gun Or Taser
- 18.35F Definition Of School—Weapons
- 18.35G Definition Of Firearm
- 18.35H Definition Of Metal Piercing Bullet
- 18.35I Definition Of Handgun
- 18.35J Definition Of Courthouse—Weapons
- 18.35K Definition Of Mental Institution
- 18.35L Definition Of Patient In A Mental Institution
- 18.35M Definition Of Person Engaged In The Business
- 18.35N Definition Of With The Principal Objective Of Livelihood And Profit
- 18.35O Definition Of School
- 18.35P Definition Of School Related Activity
- 18.37 Definition Of Unlawful Discharge Of A Firearm—Discharge In A Cemetery
- 18.38 Issues In Unlawful Discharge Of A Firearm—Discharge In A Cemetery
- 18.39 Definition Of Unlawful Sale Of Firearms By Liquor Licensee
- 18.40 Issues In Unlawful Sale Of Firearms By Liquor Licensee
- 18.41 Definition Of Reckless Discharge Of A Firearm
- 18.42 Issues In Reckless Discharge Of A Firearm
- 18.43 Definition Of Gunrunning
- 18.44 Issues In Gunrunning

**18.01 Definition Of Unlawful Use Of Weapons**

A person commits the offense of unlawful use of weapons when he knowingly

[1] [(sells) (manufactures) (purchases) (possesses) (carries)] a [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (throwing star) (switchblade knife) (ballistic knife)].

[or]

[2] [(carries) (possesses)] a [(dagger) (dirk) (billy) (dangerous knife) (razor) (stiletto) (broken bottle) (piece of glass) (stun gun or taser) [or other dangerous or deadly weapon or instrument of like character]] with intent to use the [(dagger) (dirk) (billy) (dangerous knife) (razor) (stiletto) (broken bottle) (piece of glass) (stun gun or taser) [or other dangerous or deadly weapon or instrument of a like character]] unlawfully against another.

[or]

[3] carries [(on or about his person) (in a vehicle)] a [(tear gas gun projector) (tear gas bomb) (any object containing a noxious liquid gas or substance other than an object containing a non-lethal noxious liquid gas or substance designed solely for personal defense when carried by a person 18 years of age or older)].

[or]

[4] [(carries) (possesses)] a [(pistol) (revolver) (firearm) (stun gun or taser)] [(concealed on or about his person) (in a vehicle)] except when on his land, in his abode, or in his fixed place of business.

[or]

[5] sets a spring gun.

[or]

[6] possesses a device or attachment [(designed) (used) (intended for use)] in silencing the report of any firearm.

[or]

[7] [(sells) (manufactures) (purchases) (possesses) (carries)] [(a machine gun) (any combination of parts designed or intended for use in converting any weapon into a machine gun) (any combination of parts from which a machine gun can be assembled if such parts are in possession or under the control of a person) (a rifle having one or more barrels less than 16 inches in length) (a shotgun having one or more barrels less than 18 inches in length) (a weapon made from a rifle or shotgun, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than 26 inches) (a [(bomb) (bomb-shell) (grenade)] [or a bottle or other container containing an explosive substance of over one-quarter ounce for like purposes])].

[or]

[8] [(carries) (possesses)] a [(firearm) (stun gun or taser) (deadly weapon)] [(in a place which is licensed to sell intoxicating beverages) (at a public gathering held



pursuant to a license issued by a governmental body) (at a public gathering at which an admission is charged)], excluding a place where a showing, demonstration, or lecture involving the exhibit of unloaded firearms is conducted.

[or]

[9] [(carries) (possesses)] [(in a vehicle) (on or about his person)] a [(pistol) (revolver) (stun gun or taser) (firearm) (ballistic knife)] when he is hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[10] [(carries) (possesses)] on or about his person a [(pistol) (revolver) (stun gun or taser) (firearm)] while upon [(a public street) (a public alley) (public lands)] within the corporate limits of [(a city) (a village) (an incorporated town)] except when an invitee for the purpose of [(the display of such weapon) (lawful commerce in weapons)] or when on his land, in his abode, or in his fixed place of business.

[or]

[11] [(sells) (manufactures) (purchases)] an explosive bullet.

[or]

[12] [(carries) (possesses)] on or about his person [(a) (an)] [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (switchblade knife) (ballistic knife) (tear gas gun projector bomb) (object containing noxious liquid or gas) (pistol) (revolver) (firearm) [(bomb) (grenade) [or a bottle or other container containing an explosive substance over one-quarter ounce] (cartridge)]] while [(in the building) (on the grounds)] of [(an elementary school) (a secondary school) (a community college) (a college) (a university)].

### Committee Note

720 ILCS 5/24-1 (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, § 24-1 (1991)), amended by P.A. 86-1003, P.A. 86-1028, P.A. 86-1393, effective February 5, 1990; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.02.

When applicable, give Instruction 18.35, defining the term “ballistic knife”; Instruction 18.35A, defining the term “switchblade knife”; Instruction 18.35E, defining the term “stun gun or taser”; Instruction 18.35B, defining the term “explosive bullet”; Instruction 18.35D, defining the term “machine gun”; and Instruction 18.35C, defining the term “cartridge”. The term “bludgeon” has been defined as a “stick with one end loaded, thicker or heavier than the other end.” *People v. Tate*, 68 Ill.App.3d 881, 25 Ill.Dec. 313, 386 N.E.2d 584 (1st Dist.1979).

P.A. 88-467 deleted paragraph 12 from Section 24-1(a). Accordingly, alternative [12] should not be used if the offense was committed on or after July 1, 1994, the effective date of P.A. 88-467.

The bracketed phrase “or other dangerous or deadly weapon or instrument of a like character” in paragraph [2] should be used only when the weapon charged is



not one of the weapons specifically enumerated. When the phrase is used, it must be used in conjunction with one or more of the enumerated weapons. Firearms are not included in the phrase. See *People v. Rutledge*, 104 Ill.2d 394, 84 Ill.Dec. 478, 472 N.E.2d 438 (1984).

Section 24-1(a)(7), which in part makes it unlawful to possess a “bomb, bomb-shell, grenade, bottle or other container containing an explosive substance of over one-quarter ounce for like purposes,” specifically includes “black powder bombs,” “molotov cocktails,” and “artillery projectile” within the category of “other containers.” If appropriate, one of these phrases may be added to paragraph [7]. The phrase “or a bottle or other container containing an explosive substance of over one-quarter ounce for like purposes” should be used only in conjunction with one or more of the specifically prohibited items.

Section 24-1(d) provides that in some circumstances the presence of a weapon in a private vehicle is “*prima facie*” evidence that it is possessed by all occupants of the vehicle. No instruction should be given concerning the *prima facie* effect of this evidence. *People v. Gray*, 99 Ill.App.3d 851, 55 Ill.Dec. 315, 426 N.E.2d 290 (5th Dist.1981).

Section 24-2 exempts certain persons from the offenses created in Sections 24-1(a)(1), (a)(3), (a)(4), (a)(7), (a)(8), (a)(10), and (a)(11). The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term “preponderance of the evidence.”

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**18.01A Exemptions To Weapons Offenses**

A [(description of exempt person)] may lawfully [(description of conduct charged)]. The defendant has the burden of proving by a preponderance of the evidence that at the time of the offense charged he was [(description of exempt person)].

**Committee Note**

720 ILCS 5/24-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-2 (1991)).

Give Instruction 4.18, defining the phrase “preponderance of the evidence.”

Do not use this instruction with Instruction 18.09.

Section 24-2 exempts certain persons from the offenses established by Section 24-1. Additionally, many of the sections of Article 24 that create offenses contain exemptions. See Sections 24-1(a)(12), 24-1.1(a), 24-2.1(b), 24-2.2(b), 24-3(g), 24-3(j), 24-3.2(d), and 24-3.3. This instruction can be used whether the exemption is embodied in the section creating the offense or in the exemption provisions of Section 24-2. Section 24-2(h) specifically places the burden of proving the applicability of the exemption on the defendant. The defendant must prove the exemption by a preponderance of the evidence. *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978).

This instruction cannot be used when the defense asserted is not a statutory exemption but rather an affirmative defense created by Article 24. See, e.g., Section 24-1.1(c) which establishes an affirmative defense to the offense of Unlawful Possession of a Weapon by a Person in Custody of the Department of Corrections and suggested instructions governing that affirmative defense set forth in the Committee Note to Instruction 18.09. Of course, when appropriate, a defendant would also be entitled to instructions concerning the affirmative defenses set forth in Chapter 24-25.00.

**18.02 Issues In Unlawful Use Of Weapons**

To sustain the charge of unlawful use of weapons, the State must prove the following proposition[s]:

[1] That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (throwing star) (switchblade knife) (ballistic knife)].

[or]

[2] *First Proposition:* That the defendant knowingly [(carried) (possessed)] a [(dagger) (dirk) (billy) (dangerous knife) (razor) (stiletto) (broken bottle) (piece of glass) (stun gun or taser) [or other dangerous or deadly weapon or instrument of a like character]]; and

*Second Proposition:* That the defendant did so with intent to use the [(dagger) (dirk) (billy) (dangerous knife) (razor) (stiletto) (broken bottle) (piece of glass) (stun gun or taser) [or other dangerous or deadly weapon or instrument of a like character]] unlawfully against another person.

[or]

[3A] That the defendant knowingly carried [(on or about his person) (in a vehicle)] a [(tear gas gun projector) (tear gas bomb)].

[or]

[3B] That the defendant knowingly carried [(on or about his person) (in a vehicle)] an object containing a lethal noxious liquid gas or substance.

[or]

[3C] *First Proposition:* That the defendant knowingly carried [(on or about his person) (in a vehicle)] an object containing a non-lethal noxious liquid gas or substance; and

*Second Proposition:* That when the defendant did so, he was less than 18 years of age.

[or]

*Second Proposition:* That the object containing the noxious liquid gas or substance was not designed solely for personal defense.

[or]

[4] *First Proposition:* That the defendant knowingly [(carried) (possessed)] a [(pistol) (revolver) (firearm) (stun gun or taser)] [(concealed on or about his person) (in a vehicle)]; and

*Second Proposition:* That when the defendant did so, he was not on his land, in his abode, or in his fixed place of business.

[or]

[5] That the defendant knowingly set a spring gun.



[or]

[6] That the defendant knowingly possessed a device or attachment which was [(designed) (used) (intended for use)] in silencing the report of any firearm.

[or]

[7A] That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a machine gun.

[or]

[7B] That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried) ] any combination of parts designed or intended for use in converting a weapon into a machine gun.

[or]

[7C] *First Proposition:* That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] any combination of parts from which a machine gun could be assembled; and

*Second Proposition:* That the combination of parts was in the possession or under the control of a person.

[or]

[7D] *First Proposition:* That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a rifle; and

*Second Proposition:* That the rifle had one or more barrels less than 16 inches in length.

[or]

[7E] *First Proposition:* That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a shotgun; and

*Second Proposition:* That the shotgun had one or more barrels less than 18 inches in length.

[or]

[7F] *First Proposition:* That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a weapon made from a rifle or shotgun whether by alteration, modification, or otherwise; and

*Second Proposition:* That the weapon as modified had an overall length of less than 26 inches.

[or]

[7G] That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a [(bomb) (bombshell) (grenade) [or a bottle or other container containing an explosive substance over one-quarter ounce for like purposes]].

[or]

[8] *First Proposition:* That the defendant knowingly [(carried) (possessed)] a



[(firearm) (stun gun or taser) (deadly weapon)]; and

*Second Proposition:* That when the defendant did so, he was [(in a place licensed to sell intoxicating beverages) (at a public gathering held pursuant to a license issued by a governmental body) (at a public gathering at which an admission was charged)]; and

*Third Proposition:* That a [(showing) (demonstration) (lecture)] involving the exhibit of unloaded firearms was not being conducted at the [(place) (gathering)] where the defendant [(carried) (possessed)] the [(firearm) (stun gun or taser) (deadly weapon)].

[or]

[9] *First Proposition:* That the defendant knowingly [(carried) (possessed)] [(in a vehicle) (on or about his person)] a [(pistol) (revolver) (stun gun or taser) (firearm) (ballistic knife)]; and

*Second Proposition:* That when the defendant did so he was hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[10] *First Proposition:* That the defendant knowingly [(carried) (possessed)] on or about his person a [(pistol) (revolver) (stun gun or taser) (firearm)]; and

*Second Proposition:* That when the defendant did so, he was upon [(a public street) (a public alley) (public lands)] within the corporate limits of [(a city) (a village) (an unincorporated town)]; and

*Third Proposition:* That when the defendant did so, he was not an invitee for the purpose of [(the display of such weapon) (lawful commerce in weapons)]; and

*Fourth Proposition:* That when the defendant did so, he was not on his land, in his abode, or in his fixed place of business.

[or]

[11] That the defendant knowingly [(sold) (manufactured) (purchased)] an explosive bullet.

[or]

[12] *First Proposition:* That the defendant knowingly [(carried) (possessed)] on or about his person [(a) (an)] [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (switchblade knife) (ballistic knife) (tear gas gun projector bomb) (object containing noxious liquid or gas) (pistol) (revolver) (firearm) ((bomb) (grenade))] [or a bottle or other container containing an explosive substance over one-quarter ounce] (cartridge)]; and

*Second Proposition:* That the defendant did so while [(in the building) (on the grounds)] of [(an elementary school) (a secondary school) (a community college) (a college) (a university)]

If you find from your consideration of all the evidence that [(any one of these propositions) (this proposition)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that [(each one of these propositions) (this proposition)] has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that \_\_\_\_\_, you should find the defendant not guilty.]

### Committee Note

720 ILCS 5/24-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-1 (1991)), as amended by P.A. 86-1003, effective February 5, 1990.

Give Instruction 18.01.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.01.

The bracketed numbers [1] through [12] correspond to the paragraphs of the same number in Instruction 18.01, the definitional instruction for these offenses. Paragraph [3] of the definitional instruction, defining the offenses of possession of tear gas gun projectors and bombs and other objects containing noxious substances, has been further subdivided into paragraphs [3A] through [3C] for clarity purposes. Likewise, paragraph [7] of the definitional instruction, defining the offenses of possession of machine guns, rifles, shotguns, and bombs, has been further subdivided into paragraphs [7A] through [7F]. Select the proposition(s) that correspond to the paragraph selected from the definitional instruction.

The bracketed phrase “or other dangerous or deadly weapon or instrument of a like character” in the First Proposition of the second set of propositions should be used only when the weapon charged is not one of the weapons specifically enumerated. When the phrase is used, it must be used in conjunction with one or more of the enumerated weapons. Firearms are not included in the phrase. See *People v. Rutledge*, 104 Ill.2d 394, 84 Ill.Dec. 478, 472 N.E.2d 438 (1984).

Section 24-1(a)(8) makes it an offense to possess a firearm or other specified weapon in a place licensed to sell intoxicating beverages or at certain public gatherings unless a demonstration or lecture involving the exhibition of unloaded firearms is being conducted. The statute is unclear as to whether the “exhibition of unloaded firearms” exception is applicable to places licensed to sell intoxicating beverages or is only applicable to the specified types of public gatherings. Paragraph [8] of this instruction assumes that Section 24-1(a)(8) permits weapons to be possessed in places licensed to sell intoxicating beverages as long as an exhibition concerning unloaded firearms is being conducted.

See the Committee Note to Instruction 18.01 concerning the need for definitional instructions and the effect of Section 24-1(d) which provides that in some circumstances the presence of a weapon in a private vehicle is “*prima facie* evidence” that the weapon is possessed by all occupants of the vehicle.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



### **18.03 Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Silencer—Enhancing Factor Based Upon Location**

A person commits the offense of aggravated unlawful use of weapons when he knowingly possesses a device or attachment of any kind [(designed for use) (used) (intended for use)] in silencing the report of a firearm while

[1] in a school [regardless of the [(time of day) (time of year)]]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.



### Committee Note

720 ILCS 5/24-1(c)(1) (West Supp.1993) (formerly Ill.Rev. Stat. ch. 38, § 24-1(c)(1) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.04.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(6) (possessing a silencer) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(c)(1) provides enhanced penalties for the violation of Section 24-1(a)(6) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-1(a)(6) is increased from a Class 3 to a Class 2 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for “aggravated” unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994).

Because the Committee believes that “simple” unlawful use of weapons instructions will often be given as a lesser included offense when “aggravated” unlawful use of weapons is charged, the Committee titled this offense “aggravated unlawful use of weapons” to distinguish it from “simple” unlawful use of weapons. If only “aggravated” unlawful use of weapons instructions are given to the jury, the term “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04.

When applicable, give Instruction 18.35F (defining the term “school”) and 18.35J (defining the term “courthouse”).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

**18.03U Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Bludgeon, Sling-Shot, Metal Knuckles, Throwing Star, Switchblade, Or Ballistic Knife—Enhancing Factor Based Upon Location**

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(sells) (manufactures) (purchases) (possesses) (carries)] a [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (throwing star) (switchblade knife) (ballistic knife)] while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

#### Committee Note

720 ILCS 5/24-1(c)(2) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, § 24-1(c)(2) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.04U.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife) is the predicate offense charged. When Section 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(c)(2) provides enhanced penalties for the violation of Section 24-1(a)(1) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-1(a)(1) is increased from a Class A misdemeanor to a Class 4 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for "aggravated" unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See *People v. Martin*, 266 Ill.App.3d 369, 378-79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994).

Because the Committee believes that "simple" unlawful use of weapons instructions will often be given as a lesser included offense when "aggravated" unlawful use of weapons is charged, the Committee titled this offense "aggravated unlawful use of weapons" to distinguish it from "simple" unlawful use of weapons. If only "aggravated" unlawful use of weapons instructions are given to the jury, the term "aggravated" should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04U.

When applicable, give Instruction 18.35A (defining the term "switchblade knife"), Instruction 18.35F (defining the term "school"), and Instruction 18.35J (defining the term "courthouse"). Also, when applicable, give Instruction 18.35 (defining the term "ballistic knife"); however, Section 24-1(e) exempts crossbows, common or compound bows, and underwater spearguns from the definition of a ballistic knife. The term "bludgeon" has been defined as a "stick with one end loaded, thicker or heavier than the other end." *People v. Tate*, 68 Ill.App.3d 881, 25 Ill.Dec. 313, 386 N.E.2d 584 (1st Dist.1979).



Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



**18.03V Definition Of Aggravated Unlawful Use Of Weapons—Carrying Tear Gas Or Noxious Liquid Gas—Enhancing Factor Based Upon Location**

A person commits the offense of aggravated unlawful use of weapons when he knowingly canies [(on or about his person) (in a vehicle)] a [(tear gas gun projector) (tear gas bomb) (any object containing a noxious liquid gas or substance other than an object containing a non-lethal noxious liquid gas or substance designed solely for personal defense when carried by a person 18 years of age or older)] while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

### Committee Note

720 ILCS 5/24-1(c)(2) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, § 24-1(c)(2) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

### Give Instruction 18.04V.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(3) (carrying tear gas or noxious liquid gas) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(c)(2) provides enhanced penalties for the violation of Section 24-1(a)(3) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-1(a)(3) is increased from a Class A misdemeanor to a Class 4 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for “aggravated” unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994).

Because the Committee believes that “simple” unlawful use of weapons instructions will often be given as a lesser included offense when “aggravated” unlawful use of weapons is charged, the Committee titled this offense “aggravated unlawful use of weapons” to distinguish it from “simple” unlawful use of weapons. If only “aggravated” unlawful use of weapons instructions are given to the jury, the term “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04V.

When applicable, give Instruction 18.35F (defining the term “school”), and Instruction 18.35J (defining the term “courthouse”).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

**18.03W Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Concealed Weapon—Enhancing Factor Based Upon Location**

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(carries) (possesses)] a [(pistol) (revolver) (stun gun or taser) (fireann)] [(in a vehicle) (concealed on or about his person)] except when on his land, in his abode, or in his fixed place of business while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.



### Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1 (c)(1.5).

Give Instruction 18.04W.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(4) (possessing a concealed weapon) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(c)(1.5) provides enhanced penalties for the violation of Section 24-1(a)(4) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-1(a)(4) is increased from a Class 4 to a Class 3 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for "aggravated" unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See *People v. Martin*, 266 Ill.App.3d 369, 378-79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994).

Because the Committee believes that "simple" unlawful use of weapons instructions will often be given as a lesser included offense when "aggravated" unlawful use of weapons is charged, the Committee titled this offense "aggravated unlawful use of weapons" to distinguish it from "simple" unlawful use of weapons. If only "aggravated" unlawful use of weapons instructions are given to the jury, the term "aggravated" should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04W.

When applicable, give Instruction 18.35E (defining the phrase "stun gun or taser"), Instruction 18.35F (defining the word "school"), Instruction 18.35G (defining the word "firearm"), and Instruction 18.35J (defining the word "courthouse").

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



**18.03X Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Rifle, Shotgun, Or Bomb—Enhancing Factor Based Upon Location**

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(sells) (manufactures) (purchases) (possesses) (carries)]

[A] a rifle having one or more barrels less than 16 inches in length; while

[or]

[B] a shotgun having one or more barrels less than 18 inches in length; while

[or]

[C] a weapon made from a rifle or shotgun whether by alteration, modification, or otherwise, if such weapon as modified had an overall length of less than 26 inches; while

[or]

[D] a [(bomb) (bomb-shell) (grenade)] [or a bottle or other container containing an explosive substance over one-quarter ounce for like purposes]; while

[1] in a school [regardless of the [(time of day) (time of year)]]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

### Committee Note

720 ILCS 5/24-1(c)(1) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, § 24-1(c)(1) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.04X.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Sections 24-1(a)(7)(ii) and (7)(iii) define the offenses of possession of rifles, shotguns, and bombs which have been subdivided into paragraphs [A] through [D] for clarity purposes. Select the alternative that corresponds to the offense in the charge.

Section 24-1(c)(1) provides enhanced penalties for the violation of Sections 24-1(a)(7)(ii) and (7)(iii) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-1(a)(7)(ii) or (7)(iii) is increased from a Class 3 to a Class 2 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for "aggravated" unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See *People v. Martin*, 266 Ill.App.3d 369, 378-79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994).

Because the Committee believes that "simple" unlawful use of weapons instructions will often be given as a lesser included offense when "aggravated"

unlawful use of weapons is charged, the Committee titled this offense “aggravated unlawful use of weapons” to distinguish it from “simple” unlawful use of weapons. If only “aggravated” unlawful use of weapons instructions are given to the jury, the term “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04X.

When applicable, give Instruction 18.35F (defining the term “school”), and Instruction 18.35J (defining the term “courthouse”).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

### 18.03XX Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Machine Gun—Enhancing Factors

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(sells) (manufactures) (purchases) (possesses) (carries)]

[A] a machine gun; while

[or]

[B] any combination of parts designed or intended for use in converting a weapon into a machine gun; while

[or]

[C] any combination of parts from which a machine gun could be assembled if such combination of parts was in the possession or under the control of a person; while

[1] possessing the [(machine gun) (machine gun parts)] in the compartment of a motor vehicle.

[or]

[2] possessing the [(machine gun) (machine gun parts)] on his person while [(it is) (they are)] loaded.

#### Committee Note

720 ILCS 5/24-1(b) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, § 24-1(b) (1991)), amended by P.A. 88-467, effective July 1, 1994.

Give Instruction 18.04XX.

Give Instruction 18.35D, defining the term “machine gun”.

When applicable, give Instruction 23.43B, defining the term “motor vehicle”.

Use this instruction when 24-1(a)(7)(i) (possessing a machine gun) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one’s identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.03 series instruction.

Section 24-1(a)(7)(i) defines the offenses of possession of a machine gun or parts of a machine gun which have been subdivided into paragraphs [A] through [C] for clarity purposes. Select the alternative that corresponds to the offense in the charge.

Section 24-1(b) provides enhanced penalties for the violation of Section 24-1(a)(7)(i) when committed under the conditions listed in the above alternatives numbered [1] and [2]. A violation of Section 24-1(a)(7)(i) is increased from a Class 2 to a Class X felony. Select the alternative that corresponds to the condition in the charge.

The Committee has created separate instructions for “aggravated” unlawful use



of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994).

Because the Committee believes that “simple” unlawful use of weapons instructions will often be given as a lesser included offense when “aggravated” unlawful use of weapons is charged, the Committee titled this offense “aggravated unlawful use of weapons” to distinguish it from “simple” unlawful use of weapons. If only “aggravated” unlawful use of weapons instructions are given to the jury, the word “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04XX.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

**18.03Y Definition Of Aggravated Unlawful Use Of Weapons—Concealing One's Identity—Enhancing Factor Based Upon Location**

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(carries) (possesses)] [(in a vehicle) (on or about his person)] a [(pistol) (revolver) (stun gun or taser) (firearm) (ballistic knife)] when he is hooded, robed, or masked in such a manner as to conceal his identity while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

### Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1 (c)(1.5).

Give Instruction 18.04Y.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(9) (concealing one's identity) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate § 18.03 series instruction.

Section 24-1(c)(1.5) provides enhanced penalties for the violation of Section 24-1(a)(9) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-1(a)(9) is increased from a Class 4 to a Class 3 felony. Select the alternative that corresponds to the location in the charge.

When applicable, give Instruction 18.35 (defining the term “ballistic knife”), Instruction 18.35E (defining the phrase “stun gun or taser”), Instruction 18.35F (defining the word “school”), Instruction 18.35G (defining the word “firearm”), and Instruction 18.35J (defining the word “courthouse”).

The Committee has created separate instructions for “aggravated” unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994).

Because the Committee believes that “simple” unlawful use of weapons instructions will often be given as a lesser included offense when “aggravated” unlawful use of weapons is charged, the Committee titled this offense “aggravated unlawful use of weapons” to distinguish it from “simple” unlawful use of weapons. If only “aggravated” unlawful use of weapons instructions are given to the jury, the word “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04Y.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



**18.03Z Definition Of Aggravated Unlawful Use Of Weapons—Possessing A Weapon On A Public Way Or Land Within City Limits—Enhancing Factor Based Upon Location**

A person commits the offense of aggravated unlawful use of weapons when he knowingly [(carries) (possesses)] on or about his person a [(pistol) (revolver) (stun gun or taser) (firearm)] while upon [(a public street) (a public alley) (public lands)] within the corporate limits of [(a city) (a village) (an incorporated town)] except when an invitee for the purpose of [(the display of such weapon) (lawful commerce in weapons)] or when on his land, in his abode, or in his fixed place of business; while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.



[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

#### Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1 (c)(1.5).

Give Instruction 18.04Z.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), or 24-1(a)(9) (concealing one's identity) is the predicate offense charged, use the appropriate § 18.03 series instruction.

Section 24-1(c)(1.5) provides enhanced penalties for the violation of Section 24-1(a)(10) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-1(a)(10) is increased from a Class 4 to a Class 3 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for “aggravated” unlawful use of weapons because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994).

Because the Committee believes that “simple” unlawful use of weapons instructions will often be given as a lesser included offense when “aggravated” unlawful use of weapons is charged, the Committee titled this offense “aggravated unlawful use of weapons” to distinguish it from “simple” unlawful use of weapons. If only “aggravated” unlawful use of weapons instructions are given to the jury, the word “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.04Z.

When applicable, give Instruction 18.35E (defining the phrase “stun gun or taser”), Instruction 18.35F (defining the word “school”), Instruction 18.35G (defining the word “firearm”), and Instruction 18.35J (defining the word “courthouse”).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

#### 18.04 Issues In Aggravated Unlawful Use Of Weapons—Possessing A Silencer—Enhancing Factor Based Upon Location

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed a device or attachment of any kind [(designed for) (used in) (intended for use in)] silencing the report of a firearm; and

*Second Proposition:* That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/24-1(c)(1) (West Supp.1993) (formerly Ill.Rev. Stat. ch. 38, § 24-1(c)(1) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.03.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(6) (possessing a silencer) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The bracketed numbers [1] through [13] under the Second Proposition correspond to the alternatives of the same number in Instruction 18.03, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(1) are set forth in Section 24-1(c)(3). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term "preponderance of the evidence." The exemptions set forth in Section 24-2 are not applicable to the non-aggravated versions of offenses under Section 24-1(a)(6).

See Committee Note to Instruction 18.03 concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(6) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**18.04U Issues In Aggravated Unlawful Use Of Weapons—Possessing A Bludgeon, Sling-Shot, Metal Knuckles, Throwing Star, Switchblade, Or Ballistic Knife—Enhancing Factor Based Upon Location**

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)] a [(bludgeon) (black-jack) (sling-shot) (sand-club) (sand-bag) (metal knuckles) (throwing star) (switchblade knife) (ballistic knife)]; and

*Second Proposition:* That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 5/24-1(c)(2) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, § 24-1(c)(2) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.03U.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife) is the predicate offense charged. When Section 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate § 18.04 series instruction.

The bracketed numbers [1] through [13] under the Second Proposition correspond to the alternatives of the same number in Instruction 18.03U, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(2) are set forth in Section 24-1(c)(3). Also, the exemptions set forth in Section 24-2(d) are applicable to all offenses under Section 24-1(a)(1). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term "preponderance of the evidence."

See Committee Note to Instruction 18.03U concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(1)

based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

# **18.04V Issues In Aggravated Unlawful Use Of Weapons—Carrying Tear Gas Or Noxious Liquid Gas—Enhancing Factor Based Upon Location**

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly canied [(in a vehicle) (on or about his person)]

[A] a [(tear gas gun projector) (tear gas bomb)]; and

[or]

[B] an object containing a lethal noxious liquid gas or substance; and

[or]

[C] an object containing a non-lethal noxious liquid gas or substance and that when the defendant did so, he was less than 18 years of age; and

[or]

[D] an object containing a non-lethal noxious liquid gas or substance which was not designed solely for personal defense; and

*Second Proposition:* That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.



[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/24-1(c)(2) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, § 24-1(c)(2) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.03V.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(3) (carrying tear gas or noxious liquid gas) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The first part of Instruction 18.03U, which defines the offenses under Section 24-1(a)(3), has been subdivided into paragraphs [A] through [D] under the First Proposition for clarity purposes. Select the paragraphs that correspond to the bracketed alternatives selected in the first part of Instruction 18.03U.

The bracketed numbers [1] through [13] under the Second Proposition corre-

spond to the alternatives of the same number in Instruction 18.03U. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(2) are set forth in Section 24-1(c)(3). Also, the exemptions set forth in Section 24-2(a) are applicable to all offenses under Section 24-1(a)(3). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term “preponderance of the evidence.”

See Committee Note to Instruction 18.03V concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(3) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**18.04W Issues In Aggravated Unlawful Use Of Weapons—Possessing A Concealed Weapon—Enhancing Factor Based Upon Location**

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(carried) (possessed)] a [(pistol) (revolver) (stun gun or taser) (firearm)] [(in a vehicle) (concealed on or about his person) ]; and

*Second Proposition:* That when the defendant did so, he was not on his land, in his abode, or in his fixed place of business; and

*Third Proposition:* That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.



[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1 (c)(1.5).

Give Instruction 18.03W.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(4) (possessing a concealed weapon) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The bracketed numbers [1] through [13] under the Third Proposition correspond to the alternatives of the same number in Instruction 18.03W, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(1.5) are set forth in Section 24-1(c)(3). Also, the exemptions set forth in Sections 24-2(a), 2(b), and 2(f) are applicable to all offenses under Section 24-1(a)(4). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase "preponderance of the evidence."

See Committee Note to Instruction 18.03W concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(4) based upon the location of the offense charged.



Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**18.04X Issues In Aggravated Unlawful Use Of Weapons—Possessing A Rifle, Shotgun, Or Bomb—Enhancing Factor Based Upon Location**

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)]

[A] a rifle having one or more barrels less than 16 inches in length; and

[or]

[B] a shotgun having one or more barrels less than 18 inches in length; and

[or]

[C] a weapon made from a rifle or shotgun whether by alteration, modification, or otherwise, if such weapon as modified had an overall length of less than 26 inches; and

[or]

[D] a [(bomb) (bomb-shell) (grenade)] [or a bottle or other container containing an explosive substance over one-quarter ounce for like purposes]; and

*Second Proposition:* That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/24-1(c)(1) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, § 24-1(c)(1) (1991)), amended by P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; P.A. 87-930, effective January 1, 1993; P.A. 88-156, effective July 28, 1993; and P.A. 88-467, effective July 1, 1994.

Give Instruction 18.03X.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Sections 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The bracketed letters [A] through [D] under the First Proposition correspond to the alternatives of the same letter in Instruction 18.03X, the definitional instruction for this offense, and the bracketed numbers [1] through [13] under the Second Proposition correspond to the alternatives of the same number in Instruction 18.03X. Select the alternatives that correspond to the alternatives selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(1) are set forth in Section 24-1(c)(3). Also, the exemptions set forth in Section 24-2(c) are applicable to all offenses under Sections 24-1(a)(7)(ii) and (7)(iii). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term “preponderance of the evidence.”

See Committee Note to Instruction 18.03X concerning the need for definitional instructions and a discussion of penalty enhancement under Sections 24-1(a)(7)(ii) and (7)(iii) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**18.04XX Issues In Aggravated Unlawful Use Of Weapons—Possessing A Machine Gun—Enhancing Factors**

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(sold) (manufactured) (purchased) (possessed) (carried)]

[A] a machine gun; and

[or]

[B] any combination of parts designed or intended for use in converting a weapon into a machine gun; and

[or]

[C] any combination of parts from which a machine gun could be assembled if such combination of parts was in the possession or under the control of a person; and

*Second Proposition:* That the defendant did so while

[1] possessing the [(machine gun) (machine gun parts)] in the compartment of a motor vehicle.

[or]

[2] possessing the [(machine gun) (machine gun parts)] on his person while [(it is) (they are)] loaded.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/24-1(b) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, § 24-1(b) (1991)), amended by P.A. 88-467, effective July 1, 1994.

Give Instruction 18.03XX.

Use this instruction when Section 24-1(a)(7)(i) (possessing a machine gun) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), 24-1(a)(9) (concealing one's identity), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate § 18.04 series instruction.

The bracketed letters [A] through [C] under the First Proposition correspond to

the alternatives of the same letter in Instruction 18.03XX, the definitional instruction for this offense, and the bracketed numbers [1] and [2] under the Second Proposition correspond to the alternatives of the same number in Instruction 18.03XX. Select the alternatives that correspond to the alternatives selected from the definitional instruction.

The exemptions set forth in Section 24-2(c) are applicable to the offenses under Section 24-1(a)(7)(i). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term “preponderance of the evidence.”

See Committee Note to Instruction 18.03XX concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(7)(i) based upon the enhancing factors present when the charged offense was committed.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**18.04Y Issues In Aggravated Unlawful Use Of Weapons—Concealing One's Identity—Enhancing Factor Based Upon Location**

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(carried) (possessed in a vehicle) (possessed on or about his person)] a [(pistol) (revolver) (stun gun or taser) (firearm) (ballistic knife)]; and

*Second Proposition:* That the defendant did so while hooded, robed, or masked in such a manner as to conceal his identity; and

*Third Proposition:* That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.



[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1 (c)(1.5).

Give Instruction 18.03Y.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(9) (concealing one's identity) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), or 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged, use the appropriate 18.04 series instruction.

The bracketed numbers [1] through [13] under the Third Proposition correspond to the alternatives of the same number in Instruction 18.03Y, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(1.5) are set forth in Section 24-1(c)(3). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase "preponderance of the evidence." The exemptions set forth in Section 24-2 are not applicable to the non-aggravated versions of offenses under Section 24-1(a)(9).

See Committee Note to Instruction 18.03Y concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(9) based upon the location of the offense charged.



Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**18.04Z Issues In Aggravated Unlawful Use Of Weapons—Possessing A Weapon On A Public Way Or Land Within City Limits—Enhancing Factor Based Upon Location**

To sustain the charge of aggravated unlawful use of weapons, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(carried) (possessed)] on or about his person a [(pistol) (revolver) (stun gun or taser) (firearm)]; and

*Second Proposition:* That when the defendant did so, he was upon [(a public street) (a public alley) (public lands)] within the corporate limits of [(a city) (a village) (an incorporated town)]; and

*Third Proposition:* That when the defendant did so, he was not an invitee for the purpose of [(the display of such weapon) (lawful commerce in weapons)]; and

*Fourth Proposition:* That when the defendant did so, he was not on his land, in his abode, or in his fixed place of business; and

*Fifth Proposition:* That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency. [or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/24-1(c)(1.5) (West, 1994), added by P.A. 88-680, effective January 1, 1995. P.A. 88-680 removed this factor from Section 24-1(c)(2) and placed it in new Section 24-1 (c)(1.5).

Give Instruction 18.03Z.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Use this instruction when Section 24-1(a)(10) (possessing a weapon on a public way or land within city limits) is the predicate offense charged. When Section 24-1(a)(1) (possessing a bludgeon, sling-shot, metal knuckles, throwing star, switchblade, or ballistic knife), 24-1(a)(3) (carrying tear gas or noxious liquid gas), 24-1(a)(4) (possessing a concealed weapon), 24-1(a)(6) (possessing a silencer), 24-1(a)(7)(i) (possessing a machine gun), 24-1(a)(7)(ii) or (7)(iii) (possessing a rifle, shotgun, or bomb), or 24-1(a)(9) (concealing one's identity) is the predicate offense charged, use the appropriate 18.03 series instruction.

The bracketed numbers [1] through [13] under the Fifth Proposition correspond to the alternatives of the same number in Instruction 18.03Z, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Exemptions to the aggravated version of offenses under Section 24-1(c)(1.5) are set forth in Section 24-1(c)(3). Also, the exemptions set forth in Sections 24-2(a), 2(b), and 2(f) are applicable to all offenses under Section 24-1(a)(10). The defendant bears the burden of proving the exemptions by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase "preponderance of the evidence."

See Committee Note to Instruction 18.03Z concerning the need for definitional instructions and a discussion of penalty enhancement under Section 24-1(a)(10) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**18.05 Definition Of Subsequent Offense Of Unlawful Use Of Weapons**

A person commits the offense of subsequent offense of unlawful use of weapons when he, having been previously convicted of the offense of unlawful use of weapons, knowingly [(carries) (possesses)] a [(pistol) (revolver) (firearm) (stun gun or taser)] [(in a vehicle) (concealed on or about his person)] except when on his land, in his abode, or in his fixed place of business.

**Committee Note**

720 ILCS 5/24-1(a)(4) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-1(a)(4) and (b) (1991)).

Give Instruction 18.06.

When applicable, give Instruction 18.35E, defining the phrase “stun gun or taser.”

Section 24-1(b) provides that a second or subsequent violation of Section 24-1(a)(4) increases the classification of the offense from a Class A misdemeanor to a Class 4 felony. Section 24-1(a)(4) prohibits carrying certain weapons in a vehicle or concealed on or about the person. When the prior conviction is for a violation of any subsection of Section 24-1(a) other than Section 24-1(a)(4), the enhanced penalty provision of Section 24-1(b) is not applicable and this instruction cannot be given.

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. See *People v. Hicks*, 119 T11.2d 29, 115 Ill.Dec. 623, 518 N.E.2d 148 (1987); *People v. Palmer*, 104 T11.2d 340, 84 Ill.Dec. 658, 472 N.E.2d 795 (1984); *People v. Mays*, 80 Ill.App.3d 340, 35 Ill.Dec. 652, 399 N.E.2d 718 (3d Dist.1980). However, Chapter 38, Section 111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be presented to the jury and this instruction should not be used. See *People v. Kennard*, 204 Ill.App.3d 641, 149 Ill.Dec. 492, 561 N.E.2d 1188 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 18.01.

The exemptions set forth in Section 24-2 applicable to the offense created in Section 24-1(a)(4) are likewise applicable to subsequent offense unlawful use of weapons. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 T11.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase “preponderance of the evidence.”

Use applicable bracketed material.

## 18.06 Issues In Subsequent Offense Of Unlawful Use Of Weapons

To sustain the charge of subsequent offense of unlawful use of weapons, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(carried) (possessed)] a [(pistol) (revolver) (firearm) (stun gun or taser)] [(in a vehicle) (concealed on or about his person) ]; and

*Second Proposition:* That when the defendant did so, he was not on his own land, in his abode, or in his fixed place of business; and

*Third Proposition:* That the defendant has been previously convicted of unlawful use of weapons.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that \_\_\_\_\_, you should find the defendant not guilty.]

### Committee Note

720 ILCS 5/24-1(b) (West, 1999) (formerly Ill.Rev. Stat. ch. 38, § 24-1(b) (1991)).

Give Instruction 18.05.

Section 24-1(b) provides that a second or subsequent violation of Section 24-1(a)(4) increases the classification of the offense from a Class A misdemeanor to a Class 4 felony. Section 24-1(a)(4) prohibits carrying certain weapons in a vehicle or concealed on or about the person. The first conviction must precede the conduct constituting the subsequent offense. See *People v. Phillips*, 56 Ill.App.3d 689, 14 Ill.Dec. 161, 371 N.E.2d 1214 (5th Dist.1978); *People v. Miller*, 115 Ill.App.3d 592, 450 N.E.2d 767, 71 Ill.Dec. 79 (2d Dist.1983). When the prior conviction is for a violation of any subsection of Section 24-1, other than Subsection 24-1(a)(4), the enhanced penalty provision of Section 24-1(b) is not applicable and this instruction cannot be given.

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. See *People v. Hicks*, 119 Ill.2d 29, 115 Ill.Dec. 623, 518 N.E.2d 148 (1987); *People v. Palmer*, 104 Ill.2d 340, 84 Ill.Dec. 658, 472 N.E.2d 795 (1984); *People v. Mays*, 80 Ill.App.3d 340, 35 Ill.Dec. 652, 399 N.E.2d 718 (3d Dist.1980). However, Chapter 725, Section 111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be presented to the jury and this instruction should not be used. See *People v. Kennard*, 204 Ill.App.3d 641, 149 Ill.Dec. 492, 561 N.E.2d 1188

(1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 18.01.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.05.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



## 18.07 Definition Of Unlawful Possession Of A Weapon By A Felon

A person commits the offense of unlawful possession of a weapon by a felon when he, having been previously convicted of the offense of \_\_\_\_\_, knowingly possesses [(a firearm) (firearm ammunition) (a \_\_\_\_\_)].

### Committee Note

720 ILCS 5/24-1.1(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 24-1.1(a) (1991)).

Give Instruction 18.08.

Give Instruction 18.07A, defining the word “firearm,” if applicable.

Section 24-1.1(a) exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term “preponderance of the evidence.”

Insert in the first blank the prior felony conviction.

In *People v. Gonzalez*, 151 Ill.2d 79, 87, 175 Ill.Dec. 731, 734-35, 600 N.E.2d 1189, 1192-93 (1992), the supreme court held that location is not a relevant consideration for this offense. Accordingly, the bracketed alternatives referring to location have been deleted. See also *People v. Hester*, 271 Ill.App.3d 954, 956, 208 Ill.Dec. 690, 694, 649 N.E.2d 1351, 1354 (4th Dist. 1995).

If the charge involves a weapon prohibited by Section 24-1 other than a firearm or firearms ammunition, insert in the second blank the name or description of the weapon. If the weapon is prohibited by Section 24-1(a)(2), the State must prove, in addition to possession, an intent to use the weapon unlawfully against another. *People v. Crawford*, 145 Ill.App.3d 318, 99 Ill.Dec. 290, 495 N.E.2d 1025 (1st Dist. 1986). As a result, the phrase “with intent to use the \_\_\_\_\_ unlawfully against another” must be added to the end of the instruction when a Section 24-1(a)(2) weapon is charged.

Use applicable bracketed material.



**18.07A Definition Of Firearm—Unlawful Possession Of A Weapon By A Felon**

The word “firearm” means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas. [The term does not include \_\_\_\_\_.]

[Whether a firearm is operable does not affect its status as a weapon.]

**Committee Note**

430 ILCS 65/1.1 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 83-1.1 (1991)).

This instruction is for use only in conjunction with offenses charged under 720 ILCS 5/24-1.1 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 24-1.1 (1991)). Do not use this instruction with offenses arising under 720 ILCS 5/24-1 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 24-1 (1991)). Instead, see Instruction 18.35G.

Use the bracketed material in the first paragraph when appropriate. Insert in the blank the name or description of any gun or device excluded from this definition of the word “firearm” by subsection (1), (2), (3), or (4) of 430 ILCS 65/1.1 (West, 1994).

Use the bracketed second paragraph when a firearm’s operability is at issue. See *People v. White*, 253 Ill.App.3d 1097, 1098, 194 Ill.Dec. 267, 268, 627 N.E.2d 383, 384 (4th Dist.1993), and *People v. Hester*, 271 Ill. App.3d 954, 957, 208 Ill.Dec. 690, 694, 649 N.E.2d 1351, 1355 (4th Dist.1995).

## 18.08 Issues In Unlawful Possession Of A Weapon By A Felon

To sustain the charge of unlawful possession of a weapon by a felon, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed [(a firearm) (firearm ammunition) (\_\_\_\_\_)]; and

*Second Proposition:* That the defendant had previously been convicted of the offense of \_\_\_\_\_.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that the Director of the Department of State Police has granted the defendant a Firearm Owner's Identification Card, you should find the defendant not guilty.]

### Committee Note

720 ILCS 5/24-1.1(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 24-1.1(a) (1991)).

Give Instruction 18.07.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. See Committee Note to Instruction 18.07.

If the charge involves a weapon prohibited by Section 24-1, other than a firearm or firearm ammunition, insert in the blank in the First Proposition the name or description of the weapon. If the weapon is prohibited by Section 24-1(a)(2), the following proposition must be added to reflect the requirement that the defendant possessed the weapon with an intent to use it unlawfully against another:

*Second Proposition:* That the defendant did so with intent to use the \_\_\_\_\_ unlawfully against another person; and

See *People v. Crawford*, 145 Ill.App.3d 318, 99 Ill.Dec. 290, 495 N.E.2d 1025 (1st Dist.1986). The Committee suggests that this proposition be included as the Second Proposition and that the Second Proposition in the original instruction be renumbered Third Proposition.

Insert in the blank in the second proposition the prior felony conviction.

In *People v. Gonzalez*, 151 T11.2d 79, 87, 175 Ill.Dec. 731, 734-35, 600 N.E.2d 1189, 1192-93 (1992), the supreme court held that location is not a relevant consideration for this offense. Accordingly, the previous second proposition has been deleted. See also *People v. Hester*, 271 Ill.App.3d 954, 956, 208 Ill.Dec. 690, 694, 649 N.E.2d 1351, 1354 (4th Dist.1995).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose

conduct he is legally responsible” after the word “defendant” in each proposition.  
See Instruction 5.03.

## 18.09 Definition Of Unlawful Possession Of A Weapon By A Person In The Custody Of The Department Of Corrections Facilities

A person commits the offense of possession of a weapon by a person in the custody of a Department of Corrections facility when he knowingly possesses [(a firearm) (firearm ammunition) (a \_\_\_\_\_)] while confined in a penal institution which is a facility of the Illinois Department of Corrections, regardless of the intent with which he possesses the [(firearm) (firearm ammunition) (\_\_\_\_\_)].

### Committee Note

720 ILCS 5/24-1.1(b) (West, 1993) (formerly Ill.Rev. Stat. ch. 38, § 24-1.1(b) (1991)), amended by P.A. 88-300, effective January 1, 1994.

Give Instruction 18.10.

Do not use Instruction 4.09, defining the term “penal institution,” because that definition, based upon Section 2-14 (720 ILCS 5/2-14 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 2-14 (1991))), includes facilities other than those of the Illinois Department of Corrections.

Section 24-1.1(c) provides that it shall be an affirmative defense that possession of the firearm, firearm ammunition, or weapon was specifically authorized by a rule, regulation, directive, or order of the Illinois Department of Corrections. When some evidence is presented to raise this defense, the following instruction should be given:

“It is a defense to the charge of unlawful possession of a weapon by a person in the custody of a Department of Corrections facility that possession of the weapon was specifically authorized by a rule, regulation, directive, or order of the Illinois Department of Corrections.”

The defense of necessity is not available for this offense. See Section 24-1.1(d).

If the charge involves a weapon enumerated in Section 24-1, other than a firearm or firearm ammunition, insert in the blank the name or description of the weapon.

Use applicable bracketed material.



**18.10 Issues In Unlawful Possession Of A Weapon By A Person In The Custody Of The Department Of Corrections Facilities**

To sustain the charge of possession of a weapon by a person in the custody of a Department of Corrections facility, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed [(a firearm) (firearm ammunition) (a \_\_\_\_\_)], regardless of the intent with which he possessed it; and

*Second Proposition:* That when the defendant did so, he was confined in a penal institution; and

*Third Proposition:* That the penal institution in which the defendant was confined was a facility of the Illinois Department of Corrections.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/24-1.1(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-1.1(b) (1991)).

Give Instruction 18.09.

When the affirmative defense created in Section 24-1.1(c) is raised by the evidence, give the following instruction as the final proposition:

*“Fourth Proposition:* That the defendant’s possession of the [(firearm) (firearm ammunition) (\_\_\_\_\_)] was not specifically authorized by a rule, regulation, directive, or order of the Illinois Department of Corrections[.]”

The burden is on the State to overcome the affirmative defense beyond a reasonable doubt. See Chapter 720, Section 3-2. See also Committee Note to Instruction 18.09.

If a weapon enumerated in Section 24-1 forms the basis of the charge, insert in the blanks the name or description of the weapon.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 18.11 Definition Of Aggravated Discharge Of A Firearm—Discharge At A Person, Vehicle, Or Building

A person commits the offense of aggravated discharge of a firearm when he [(knowingly) (intentionally)] discharges a firearm

[1] at or into a building he [knows] (reasonably should know)] to be occupied and from a place or position outside that building.

[or]

[2] in the direction of [(another person) (a vehicle he [(knows) (reasonably should know)] to be occupied by a person)].

#### Committee Note

*Instruction and Committee Note Approved December 2, 2014*

720 ILCS 5/24-1.2(a)(1) and (a)(2) (West 2013) as amended by P.A. 87-921, effective January 1, 1993 inserting “or intentionally” after “knowingly” at the end of the introductory language; and as amended by P.A. 91-12, effective January 1, 2000 inserting “or reasonably should know” in subdivisions (a)(1) and (a)(2) and adding “by a person” at the end of subdivision (2).

Give Instruction 18.12.

When applicable, give Instruction 18.35G, defining “firearm”.

When applicable, give Instruction 18.35O, defining “school”.

When applicable, give Instruction 18.35P, defining “school related activity”.

This Instruction and Instruction 18.12 reflect the Class 1 felony variations of aggravated discharge of a firearm. For the Class X variations, see Instructions 18.13 and 18.14.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

**18.12 Issues In Aggravated Discharge Of A Firearm—Discharge At A Person, Vehicle, Or Building**

To sustain the charge of aggravated discharge of a firearm, the State must prove the following propositions:

*First Proposition:* That the defendant [(knowingly) (intentionally)] discharged a firearm;

and

[1] *Second Proposition:* That the defendant discharged the firearm at or into a building and from a place outside the building; and

*Third Proposition:* That when the defendant did so, he [(knew) (reasonably should have known)] the building was occupied.

[or]

[2] *Second Proposition:* That the defendant discharged the firearm in the direction of [(another person) (a vehicle he [(knew) (reasonably should have known)] was occupied)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Committee Note Approved December 2, 2014*

720 ILCS 5/24-1.2(a)(1) and (a)(2) (West 2013) as amended by P.A. 87-921, effective January 1, 1993 inserting “or intentionally” after “knowingly” at the end of the introductory language; and as amended by P.A. 91-12, effective January 1, 2000 inserting “or reasonably should know” in subdivisions (a)(1) and (a)(2) and adding “by a person” at the end of subdivision (2).

Give Instruction 18.11.

When applicable, give Instruction 18.35G, defining “firearm”.

When applicable, give Instruction 18.35O, defining “school”.

When applicable, give Instruction 18.35P, defining “school related activity”.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.



### 18.13 Definition Of Aggravated Discharge Of A Firearm—Enhancing Factor Based On Status Of Victim

A person commits the offense of aggravated discharge of a firearm when he knowingly discharges a firearm in the direction of

[1] a [(person he knows to be) (vehicle he knows to be occupied by)] a [(peace officer) (person summoned or directed by a peace officer) (correctional institution employee) (fireman)]

[a] while the [(officer) (employee) (fireman)] is engaged in the execution of his official duties.

[or]

[b] to prevent the [(officer) (employee) (fireman)] from performing his official duties.

[or]

[c] in retaliation for the [(officer) (employee) (fireman)] performing his official duties.

[or]

[2] a [(person he knows to be) (vehicle he knows to be occupied by)] [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit]

[a] while the [(emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] is engaged in the execution of any of his official duties.

[or]

[b] to prevent the [(emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] from performing his official duties.

[or]

[c] in retaliation for the [(emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] performing his official duties.

#### Committee Note

720 ILCS 5/24-1.2(a)(3), (a)(4), (a)(5), and (a)(6) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §§ 24-1.2(a)(3), (a)(4), (a)(5), and (a)(6) (1991)), added by P.A. 86-1393, effective September 10, 1990; and amended by P.A. 87-921, effective January 1, 1993; and P.A. 88-433, effective January 1, 1994.

Give Instruction 18.14.

Regarding offenses committed upon emergency medical technicians (EMT) (paragraph [2]), if the definition of EMT or the type of EMT becomes an issue, see Sections 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210



ILCS 50/4.12, 4.13, or 4.15 (West, 1992)) which define EMT-ambulance, EMT-paramedic, and EMT-intermediate. See 720 ILCS 5/2-6.5 (West Supp.1993). This instruction and Instruction 18.14 reflect the Class X felony variations of aggravated discharge of a firearm. For the Class 1 variations, see Instructions 18.11 and 18.12.

See Instruction 18.35G, defining the term “firearm”.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

### 18.14 Issues In Aggravated Discharge Of A Firearm—Enhancing Factor Based On Status Of Victim

To sustain the charge of aggravated discharge of a firearm, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly discharged a firearm; and

*Second Proposition:* That the defendant discharged the firearm in the direction of [(\_\_\_\_\_) (a vehicle)]; and

[1] *Third Proposition:* That the defendant knew that [(\_\_\_\_\_) was] (the vehicle was occupied by) [(a peace officer) (a person summoned or directed by a peace officer) (a correctional institution employee) (a fireman)]; and

[or]

[2] *Third Proposition:* That the defendant knew that [(\_\_\_\_\_) was] (the vehicle was occupied by) [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)]; and

*Fourth Proposition:* That the defendant did so

[a] while [(\_\_\_\_\_) (the peace officer) (the correctional officer) (the fireman) (the emergency medical technician) (the ambulance driver) (the medical assistant) (the first aid attendant)] was engaged in the execution of his official duties.

[or]

[b] to prevent [(\_\_\_\_\_) (the peace officer) (the correctional officer) (the fireman) (the emergency medical technician) (the ambulance driver) (the medical assistant) (the first aid attendant)] from performing his official duties.

[or]

[c] in retaliation for [(\_\_\_\_\_) (the peace officer) (the correctional officer) (the fireman) (the emergency medical technician) (the ambulance driver) (the medical assistant) (the first aid attendant)] performing his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/24-1.2(a)(3), (a)(4), (a)(5), and (a)(6) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §§ 24-1.2(a)(3), (a)(4), (a)(5), and (a)(6) (1991)), added by P.A. 86-1393, effective September 10, 1990; and amended by P.A. 87-921, effective

January 1, 1993; and P.A. 88-433, effective January 1, 1994.

Give Instruction 18.13.

Insert in the blanks the name of the intended victim.

Use applicable paragraphs and bracketed material. The bracketed numbers and letters in this instruction correspond with the bracketed numbers and letters in Instruction 18.13.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

**18.15 Definition Of Unlawful Sale Or Delivery Of Firearms**

A person commits the offense of unlawful sale or delivery of firearms when he knowingly

[1] [(sells) (gives)] a firearm of a size which may be concealed upon the person to any person under 18 years of age.

[or]

[2] [(sells) (gives)] a firearm to a person under 21 years of age who has been [(convicted of a misdemeanor other than a traffic offense) (adjudged delinquent)].

[or]

[3] [(sells) (gives)] a firearm to any person who is a narcotic addict.

[or]

[4] [(sells) (gives)] a firearm to any person who has been convicted of a felony.

[or]

[5] [(sells) (gives)] a firearm to any person who has been a patient in a mental [(hospital) (institution)] within the past 5 years.

[or]

[6] [(sells) (gives)] a firearm to any person who is intellectually disabled.

[or]

[7] delivers a firearm of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least 72 hours after application for its purchase has been made.

[or]

[8] delivers a [(rifle) (shotgun) (other long gun) (stun gun) (taser)], incidental to a sale, without withholding delivery of such [(rifle) (shotgun) (other long gun) (stun gun) (taser)] for at least 24 hours after application for its purchase has been made.

[or]

[9] while holding a license under the Federal Gun Control Act of 1968 as [(a) (an)] [(dealer) (importer) (manufacturer) (pawnbroker)] [(manufactures) (sells to any unlicensed person) (delivers to any unlicensed person)] a handgun having a [(barrel) (slide) (frame) (receiver)] which is a die casting of zinc alloy or other nonhomogeneous metal which will melt or deform at a temperature of less than 800 degrees Fahrenheit.

[or]

[10] [(sells) (gives)] a firearm to a person under 18 years of age who does not possess a valid Firearms Owner's Identification Card.

[or]

[11] [(sells) (gives)] a firearm while engaged in the business of selling firearms at



wholesale or retail without being licensed as a federal firearms dealer under the federal Gun Control Act of 1968.

[or]

[12] [(sells) (gives)] ownership of a firearm to a person who does not display to the [(seller) (transferor)] of the firearm a currently valid Firearms Owner's Identification Card that has previously been issued in the transferee's name by the Department of State Police.

[or]

[13] delivers the firearm, not being entitled to the possession of the firearm, knowing it to have been stolen or converted.

#### Committee Note

##### *Instruction and Committee Note Approved July 18, 2014*

720 ILCS 5/24-3 (West 2013), amended by P.A. 88-680, effective January 1, 1995, amended by P.A. 93-162, effective July 10, 2003, adding paragraph [11], amended by P.A. 93-906, effective August 11, 2004, adding paragraph [12], amended by 94-6, effective June 3, 2005, adding “stun gun” and “taser” to paragraph [8], amended by P.A. 97-347, effective January 1, 2012, adding paragraph [13], amended by P.A. 97-1167, effective June 1, 2013, substituting “institution” for “hospital” in paragraph [5] and defining “mental institution” and “patient in a mental institution”.

Give Instruction 18.16.

When applicable, give Instruction 18.35G, defining “firearm”.

When applicable, give Instruction 18.35I, defining “handgun”.

When applicable, give Instruction 18.35K, defining “mental institution”.

When applicable, give Instruction 18.35L, defining “patient in a mental institution”.

When applicable, give Instruction 18.35M, defining “person engaged in the business”.

When applicable, give Instruction 18.35N, defining “with the principal objective of livelihood and profit”.

Use the word “hospital” in paragraph [5] for offenses committed before June 1, 2013. Use the word “institution” in paragraph [5] for offenses committed on or after June 1, 2013.

When an enhanced version of the offenses of unlawful sale of firearms as set forth in Section 24-3(a) and 3(i) is charged (*see* 720 ILCS 5/24-3(k) (West 2013)), give Instructions 18.15X and 18.16X.

The bracketed phrase “other long gun” in paragraph [8] should be used only when a question is raised as to the precise nature of the weapon involved and then only in conjunction with the word “rifle” or “shotgun”.

Sections 24-3(g) and (j) exempt certain persons and transactions from criminal liability. The defendant bears the burden of proving the exemption by a prepon-

derance of the evidence. *See* 720 ILCS 5/24-2(h) (West 2013); *see also* *People v. Smith*, 71 Ill.2d 95, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining “preponderance of the evidence”.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**18.15X Definition Of Aggravated Unlawful Sale Of Firearms—Enhancing Factor Based Upon Location**

A person commits the offense of aggravated unlawful sale of firearms when he knowingly [(sells) (gives)] a firearm to any person who is under 18 years of age

[A] and the firearm is of a size which may be concealed upon the person; while

[or]

[B] who does not possess a valid Firearm Owner's Identification Card; while

[1] in a school [regardless of the [(time of day) (time of year)]]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

### Committee Note

720 ILCS 5/24-3(k) (West, 1994), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.16X.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

Sections 24-3(a) and 3(i) define different ways of committing the offenses of selling or giving a firearm to a person under 18 years of age and are presented in separate paragraphs [A] and [B] for clarity purposes. Select the alternative that corresponds to the offense in the charge.

Section 24-3(k) provides enhanced penalties for the violation of Sections 24-3(a) and 3(i) when committed on the premises listed in the above alternatives numbered [1] through [13]. A violation of Section 24-3(a) or 3(i) is increased from a Class 3 to a Class 2 felony. Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for “aggravated” unlawful sale of firearms because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994).

Because the Committee believes that “simple” unlawful sale of firearms instructions will often be given as a lesser included offense when “aggravated” unlawful sale of firearms is charged, the Committee titled this offense “aggravated unlawful sale of firearms” to distinguish it from “simple” unlawful sale of firearms. If only “aggravated” unlawful sale of firearms instructions are given to the jury, the term “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 18.16X.

When applicable, give Instruction 18.35F (defining the word “school”), Instruction 18.35J (defining the word “courthouse”), and Instruction 18.35G (defining the word “firearm”).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**18.16 Issues In Unlawful Sale Or Delivery Of Firearms**

To sustain the charge of unlawful sale or delivery of firearms, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second Proposition:* That the firearm was of a size which may be concealed upon a person; and

*Third Proposition:* That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

*Fourth Proposition:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age.

[or]

[2] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second Proposition:* That the person to whom the defendant [(sold) (gave)] the firearm was under 21 years of age; and

*Third Proposition:* That the defendant knew the person to whom he [(sold) (gave)] the firearm had been [(convicted of a misdemeanor other than a traffic offense) (adjudged delinquent)].

[or]

[3] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second Proposition:* That the person to whom the defendant [(sold) (gave)] the firearm was a narcotic addict; and

*Third Proposition:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm was a narcotic addict.

[or]

[4] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second Proposition:* That the person to whom the defendant [(sold) (gave)] the firearm had been convicted of the offense of \_\_\_\_\_; and

*Third Proposition:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been convicted of the offense of \_\_\_\_\_.

[or]

[5] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second Proposition:* That the person to whom the defendant [(sold) (gave)] the

firearm had been a patient in a mental [(hospital) (institution)] within the past 5 years; and

*Third Proposition:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been a patient in a mental [(hospital) (institution)] within the past 5 years.

[or]

[6] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second Proposition:* That the person to whom the defendant [(sold) (gave)] the firearm was intellectually disabled; and

*Third Proposition:* That the defendant knew the person to whom he [(sold) (gave)] the firearm was intellectually disabled.

[or]

[7] *First Proposition:* That the defendant knowingly delivered, incidental to a sale, a firearm of a size which may be concealed upon the person; and

*Second Proposition:* That the defendant delivered the firearm within 72 hours after application for its purchase had been made.

[or]

[8] *First Proposition:* That the defendant knowingly delivered, incidental to a sale, a [(rifle) (shotgun) (other long gun) (stun gun) (taser)]; and

*Second Proposition:* That the defendant delivered such [(rifle) (shotgun) (other long gun) (stun gun) (taser)] within 24 hours after application for its purchase had been made.

[or]

[9] *First Proposition:* That the defendant knowingly [(manufactured) (sold) (delivered)] to an unlicensed person a handgun having a [(barrel) (slide) (frame) (receiver)] which is a die casting of a zinc alloy or other nonhomogeneous metal which melts or deforms at a temperature of less than 800 degrees Fahrenheit; and

*Second Proposition:* That the defendant held a license under the federal Gun Control Act of 1968 as [(a)(an)] [(dealer) (importer) (manufacturer) (pawnbroker)].

[or]

[10] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second Proposition:* That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

*Third Proposition:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age; and

*Fourth Proposition:* That the person to whom the defendant [(sold) (gave)] the

firearm did not possess a valid Firearm Owner's Identification Card; and

*Fifth Proposition:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card.

[or]

[11] *First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second Proposition:* That the defendant was engaged in the business of selling firearms [(wholesale) (retail)]; and

*Third Proposition:* At the time the defendant was not licensed as a federal firearms dealer under the federal Gun Control Act of 1968.

[or]

[12] *First Proposition:* That the defendant [(sold) (transferred)] ownership of a firearm to another; and

*Second Proposition:* That the person to whom the defendant [(sold) (transferred)] ownership of the firearm did not display to defendant a currently valid Firearms Owner's Identification Card previously issued in that person's name by the Department of State Police.

[or]

[13] *First Proposition:* That the defendant was not entitled to possession of the firearm; and

*Second Proposition:* That the defendant delivered the firearm; and

*Third Proposition:* That the defendant knew the firearm was stolen or converted.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that \_\_\_\_\_, you should find the defendant not guilty.]

#### Committee Note

##### *Instruction and Committee Note Approved July 18, 2014*

720 ILCS 5/24-3 (West 2013), amended by P.A. 88-680, effective January 1, 1995, amended by P.A. 93-162, effective July 10, 2003, adding paragraph [11], amended by P.A. 93-906, effective August 11, 2004, adding paragraph [12], amended by 94-6, effective June 3, 2005, adding "stun gun" and "taser" to paragraph [8], amended by P.A. 97-347, effective January 1, 2012, adding paragraph [13], amended by P.A. 97-1167, effective June 1, 2013, substituting "institution" for "hospital" in paragraph [5] and defining "mental institution" and "patient in a mental institution".



Give Instruction 18.15.

When applicable, give Instruction 18.35G, defining “firearm”.

When applicable, give Instruction 18.35I, defining “handgun”.

When applicable, give Instruction 18.35K, defining “mental institution”.

When applicable, give Instruction 18.35L, defining “patient in a mental institution”.

When applicable, give Instruction 18.35M, defining “person engaged in the business”.

When applicable, give Instruction 18.35N, defining “with the principal objective of livelihood and profit”.

Use the word “hospital” in paragraph [5] for offenses committed before June 1, 2013. Use the word “institution” in paragraph [5] for offenses committed on or after June 1, 2013.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.15.

See Committee Note to Instruction 18.15 for appropriate use of the bracketed phrase “other long gun” and the need for additional definition instructions.

Insert in the blank in the Third Proposition in the second set of propositions the misdemeanor conviction other than a traffic offense.

Insert in the blank in the Second Proposition in the fourth set of propositions the felony conviction.

Section 24-3, in part, provides that a person commits the offense of unlawful sale of firearms when he knowingly transfers a firearm to a person prohibited from possessing a firearm by reason of age, mental condition, prior convictions, or prior adjudication of delinquency. While Section 24-3 does require the mental state of knowledge, it does not indicate precisely which elements of the offense require knowledge on the part of the defendant. The statute appears to require that the transfer of the firearm be knowingly made but is less clear as to whether the defendant must also have knowledge of the status of the transferee as underage, a former mental patient, intellectually disabled, or possessing a prior conviction or adjudication of delinquency. Section 4-3 provides that where, as here, a statute defining an offense prescribes a mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each element of the offense. Since the status of the transferee is an element of the crime under Section 24-3, the Committee is of the opinion that Section 4-3 requires the defendant to have knowledge of that status at the time the firearm is transferred. Therefore, this instruction includes a requirement that the State prove that the defendant had knowledge of the relevant status of the person to whom the firearm was transferred. While the Committee is of the opinion that Sections 4-3 and 24-3 require this result, the Committee is not aware of any reported decision discussing the issue.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

### 18.16X Issues In Aggravated Unlawful Sale Of Firearms—Enhancing Factor Based Upon Location

To sustain the charge of aggravated unlawful sale of firearms, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second Proposition:* That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

*Third Proposition:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age; and

[A] *Fourth Proposition:* That the firearm was of a size which may be concealed upon a person; and

*Fifth Proposition:* That the defendant did so while

[or]

[B] *Fourth Proposition:* That the person to whom the defendant [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card; and

*Fifth Proposition:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card; and

*Sixth Proposition:* That the defendant did so while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential

property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] in a courthouse.

[or]

[12] on the real property comprising a courthouse.

[or]

[13] on a public way within 1000 feet of the real property comprising a courthouse.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/24-3(k) (West, 1994), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.15X.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

The bracketed portions [A] and [B] correspond to the alternatives of the same letter in Instruction 18.15X, the definitional instruction for this offense, and the bracketed numbers [1] through [13] correspond to the alternatives of the same number in Instruction 18.15X. Select the alternatives that correspond to the alternatives selected from the definitional instruction.

See the Committee Note to Instruction 18.16 regarding the mental state of knowledge which the Committee has set forth in the Third Proposition and the Fifth Proposition in alternative [B].

See Committee Note to Instruction 18.15X concerning the need for definitional instructions and a discussion of penalty enhancement under Sections 24-3(a) and 3(i) based upon the location of the offense charged.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.



**18.17 Definition Of Unlawful Possession Of Firearms And Firearm Ammunition**

A person commits the offense of unlawful possession of [(firearms) (firearm ammunition) (handguns)] when he

[1] is under 18 years of age and knowingly has in his possession a [(firearm of a size) (handgun)] which may be concealed upon his person.

[or]

[2] is under 21 years of age and has been [(convicted of the offense of \_\_\_\_\_) (adjudged delinquent)] and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[3] is a narcotic addict and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[4] has been a patient in a mental hospital within the past 5 years and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[5] is mentally retarded and knowingly has in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[6] knowingly has in his possession an explosive bullet.

**Committee Note**

720 ILCS 5/24-3.1 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 24-3.1 (1991)), amended by P.A. 88-680, effective January 1, 1995.

When applicable, give Instruction 18.35I, defining the word “handgun.”

When giving paragraph [6], give Instruction 18.35B, defining the term “explosive bullet.”

P.A. 88-680, effective January 1, 1995, provides that if the violation of Section 24-3.1 is committed with a handgun, the offense is increased from a Class A misdemeanor to a Class 4 felony. Accordingly, the Committee has provided the bracketed alternative “(handgun)” to the title of the offense in the opening phrase of this instruction and alternatives [1] through [5] to allow the jury to specifically find this element of the Class 4 felony offense. If an issue arises whether the firearm is a handgun, two separate sets of instructions may be appropriate in order to distinguish between a firearm and a handgun.

Although Section 24-3.1 does not include a mental state, any possession must be knowing. See 720 ILCS 5/4-2 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 4-2 (1991)). See also *People v. Woodworth*, 187 Ill.App.3d 44, 134 Ill.Dec. 814, 542 N.E.2d 1321 (5th Dist.1989).

Insert in the blank the name of the misdemeanor other than a traffic offense when applicable.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**18.18 Issues In Unlawful Possession Of Firearms And Firearm Ammunition**

To sustain the charge of unlawful possession of [(firearms) (firearm ammunition) (handguns)], the State must prove the following proposition[s]:

[1] *First Proposition:* That the defendant was under 18 years of age; and

*Second Proposition:* That the defendant knowingly had in his possession a [(firearm) (handgun)]; and

*Third Proposition:* That the [(firearm) (handgun)] was of a size which could be concealed on defendant's person.

[or]

[2] *First Proposition:* That the defendant was under 21 years of age; and

*Second Proposition:* That the defendant had been [(convicted of the offense of \_\_\_\_\_) (adjudged delinquent)]; and

*Third Proposition:* That the defendant knowingly had in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[3] *First Proposition:* That the defendant was a narcotic addict; and

*Second Proposition:* That the defendant knowingly had in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[4] *First Proposition:* That the defendant was a patient in a mental hospital within the past 5 years; and

*Second Proposition:* That the defendant knowingly had in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[5] *First Proposition:* That the defendant was mentally retarded; and

*Second Proposition:* That the defendant knowingly had in his possession [(a firearm) (firearm ammunition) (a handgun)].

[or]

[6] That the defendant knowingly had in his possession an explosive bullet.

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any one of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/24-3.1 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 24-3.1 (1991)),

amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.17.

The bracketed numbers [1] through [6] correspond to the paragraphs of the same number in Instruction 18.17, the definitional instruction for these offenses.

Insert in the blank in the second set of propositions the name of the misdemeanor other than a traffic offense when applicable.

P.A. 88-680, effective January 1, 1995, provides that if the violation of Section 24-3.1 is committed with a handgun, the offense is increased from a Class A misdemeanor to a Class 4 felony. Accordingly, the Committee has provided the bracketed alternative “(handgun)” to the title of the offense in the opening phrase of this instruction and alternatives [1] through [5] to allow the jury to specifically find this element of the Class 4 felony offense. See the Committee Note to Instruction 18.17.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



### 18.19 Definition Of Unlawful Sale Or Delivery Of Firearms On School Or Public Housing Premises

A person commits the offense of unlawful [(sale) (delivery)] of firearms on the premises of a [(school) (public housing facility)] when he, being 18 years of age or older, [(knowingly) (intentionally) (recklessly)] [(sells) (gives) (delivers)] a firearm to any person under 18 years of age while

[1] in a school [regardless of the [(time of day) (time of year)]].

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]].

[or]

[3] in residential property owned, operated, and managed by a public housing agency.

[or]

[4] on the real property comprising residential property owned, operated, and managed by a public housing agency.

#### Committee Note

720 ILCS 5/24-3.3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 24-3.3 (1991)), amended by P.A. 87-524, effective January 1, 1992.

Give Instruction 18.20.

When appropriate, give Instruction 18.35F, defining the word “school.”

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

The bracketed numbers [1] through [4] correspond to the locations indicated in Section 24-3.3. Select the alternative that corresponds to the location in the charge.

Because Section 24-3.3 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill.2d 15, 169 Ill.Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* *People v. Gean*, 143 Ill.2d 281, 158 Ill.Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill.2d 397, 168 Ill.Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill.2d 322, 60 Ill.Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Section 24-3.3 exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term "preponderance of the evidence."

Use applicable bracketed material.

**18.20 Issues In Unlawful Sale Or Delivery Of Firearms On School Or Public Housing Premises**

To sustain the charge of unlawful [(sale) (delivery)] of firearms on the premises of a [(school) (public housing facility)], the State must prove the following propositions:

*First Proposition:* That the defendant [(knowingly) (intentionally) (recklessly)] [(sold) (gave) (delivered)] a firearm; and

*Second Proposition:* That when the defendant did so, he was 18 years of age or older; and

*Third Proposition:* That the defendant [(sold) (gave) (delivered)] the firearm while  
[1] in a school [regardless of the [(time of day) (time of year)]]; and

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year)]]; and

[or]

[3] in residential property owned, operated, and managed by a public housing agency; and

[or]

[4] on the real property comprising residential property owned, operated, and managed by a public housing agency; and

*Fourth Proposition:* That the person to whom the firearm was [(sold) (given) (delivered)] was under 18 years of age.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that \_\_\_\_\_, you should find the defendant not guilty.]

**Committee Note**

720 ILCS 5/24-3.3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 24-3.3 (1991)), amended by P.A. 87-524, effective January 1, 1992.

Give Instruction 18.19.

When appropriate, give Instruction 18.35F, defining the word “school.”

Use the bracketed portion of the last paragraph of the instruction when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.19.

Use the bracketed material regarding the time of day or time of year of the events

in question for alternatives [1] and [2] only when the time of day or time of year becomes a potential issue.

The bracketed numbers [1] through [4] under the Third Proposition correspond to the alternatives of the same number in Instruction 18.19, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Because Section 24-3.3 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill.2d 15, 169 Ill.Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see People v. Gean*, 143 Ill.2d 281, 158 Ill.Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill.2d 397, 168 Ill.Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill.2d 322, 60 Ill.Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**18.21 Definition Of Failure To Keep A Register Of Firearm Sales By Dealer**

A person, other than [(a manufacturer selling to a bona fide wholesaler) (a manufacturer selling to a bona fide retailer) (a wholesaler selling to a bona fide retailer)], who sells firearms of a size which may be concealed upon the person, commits the offense of failure to keep a register of firearm sales by dealer when he

[1] fails to keep a register of all firearms sold or given away, containing the date of the sale or gift, the name, address, age, and occupation of the person to whom the firearm is sold or given, the price of the firearm, the kind, description and number of the firearm, and the purpose for which it is purchased and obtained.

[or]

[2] on demand of a peace officer, fails to produce for the police officer's inspection all stock on hand and a register of all firearms sold or given away by him containing the dates of the sales or gifts, the name, address, age, and occupation of the persons to whom the firearms had been sold or given, the price of the firearm, the kind, description, and number of each firearm and the purpose for which the firearms were purchased and obtained.

**Committee Note**

720 ILCS 5/24-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-4 (1991)).

Give Instruction 18.22.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**18.22 Issues In Failure To Keep A Register Of Firearm Sales By Dealer**

To sustain the charge of failure to keep a register of firearm sales by dealer, the State must prove the following propositions:

*First Proposition:* That the defendant was engaged as a seller, other than [(a manufacturer selling to a bona fide wholesaler) (a manufacturer selling to a bona fide retailer) (a wholesaler selling to a bona fide retailer)], of firearms of a size which might be concealed on a person; and

*Second Proposition:* That the defendant sold or gave away a firearm for which he did not keep a register containing the date of the sale or gift, the name, address, age, and occupation of the person to whom the firearm was sold or given, the price of the firearm, the kind, description, and number of the firearm, and the purpose for which the firearm was purchased and obtained.

[or]

*Second Proposition:* That upon demand of a police officer, the defendant failed to produce for the police officer's inspection all stock on hand and a register of all firearms sold or given away by the defendant containing the dates of sales or gifts, the name, address, age, and occupation of the persons to whom the firearms had been sold or given, the prices of the firearms, the kind, description, and number of each firearm, and the purpose for which the firearms were purchased and obtained.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/24-4 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-4 (1991)).

Give Instruction 18.21.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

**18.23 Definition Of Defacing The Identification Marks Of Firearms**

A person commits the offense of defacing the identification marks of firearms when he [(intentionally) (knowingly)] changes, alters, removes, or obliterates [(the name of the maker) (the name of the model) (the manufacturer's number) (any identification mark)] of a firearm.

**Committee Note**

720 ILCS 5/24-5 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 24-5 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.24.

No instruction should be given concerning the provision in Section 24-5(b) that possession of an altered firearm is "*prima facie* evidence" that the possessor altered the firearm. See *People v. Gray*, 99 Ill.App.3d 851, 55 Ill.Dec. 315, 426 N.E.2d 290 (5th Dist.1981). See also Committee Note to Instruction 18.24A.

Use applicable bracketed material.

**18.24 Issues In Defacing The Identification Marks Of Firearms**

To sustain the charge of defacing the identification marks of firearms, the State must prove the following proposition:

That the defendant [(intentionally) (knowingly)] changed, altered, removed, or obliterated [(the name of the maker) (the name of the model) (the manufacturer's number) (any identification mark)] of a firearm.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/24-5 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 24-5 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.23.

See Committee Note to Instruction 18.23, concerning the effect of the statutory provision that possession of an altered firearm is "*prima facie* evidence" that the possessor altered the firearm.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant." See Instruction 5.03.



**18.24A Interference Arising From Possession Of Altered Firearms****Committee Note**

720 ILCS 5/24-5(b) provides that possession of an altered firearm is “*prima facie* evidence” that the possessor altered the firearm. An instruction incorporating this statutory provision was included in the First Edition of IPI-Criminal, but deleted from subsequent editions.

Dictum in *People v. Gray*, 99 Ill.App.3d 851, 55 Ill.Dec. 315, 426 N.E.2d 290 (1981), supports the view that the legislature’s use of the term “*prima facie*” is a direction to the court on when to submit the evidence to the jury and should not be translated into a jury instruction. *Gray* holds that the jury should not be instructed in the language of the statute about the “*prima facie*” effect of certain evidence. The term is a legal one which, according to *Gray*, might be read by a jury as creating the type of presumption that is constitutionally impermissible in criminal cases, and might also confuse the jury as to which party carries the burden of proof.

**18.25 Definition Of Failure To Possess A Firearm Owner's Identification Card**

A person commits the offense of failure to possess a firearm owner's identification card when he knowingly [(acquires) (possesses)] [(a firearm) (firearm ammunition)] at a time when he does not have in his possession a firearm owner's identification card previously issued in his name by the Department of State Police.

**Committee Note**

430 ILCS 65/2(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 83-2(a) (1991)).  
Give Instruction 18.26.

Persons identified in Section 65/2(b), including members of the armed forces, federal marshals and others, are excepted from the requirement of possessing a firearm owner's identification card. Section 65/2(b), however, does not indicate whether these exceptions are to be treated as exemptions from criminal liability or are to be treated as affirmative defenses. If Section 65/2(b) creates exemptions from criminal liability, then the defendant has the burden of proving the exemptions by a preponderance of the evidence, *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978), and the instructions may be patterned after Instructions 18.01A and § 18.02. If Section 65/2(b) creates an affirmative defense, then the State has the burden of disproving the exception once raised by the evidence (Section 3-2) and the instructions should follow the format suggested in the Committee Note to Instructions 18.09 and § 18.10. Although the Committee takes no position on the issue, the fact that the legislature has not labeled the provisions of Section 65/2(b) as an affirmative defense is some indication that the exceptions in Section 65/2(b) should be treated as exemptions. See *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978) ("whenever the legislature intends a provision to constitute an affirmative defense it has labeled it as such").

Use applicable bracketed material.

**18.26 Issues In Failure To Possess A Firearm Owner's Identification Card**

To sustain the charge of failure to possess a firearm owner's identification card, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(acquired) (possessed)] [(a firearm) (firearm ammunition)] within this State; and

*Second Proposition:* That the defendant at the time of his [(acquisition) (possession)] of the [(firearm) (firearm ammunition)] failed to have in his possession a firearm owner's identification card previously issued in his name by the Department of State Police.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

430 ILCS 65/2(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 83-2(a)).

Give Instruction 18.25.

The fact that a defendant may own a firearm owner's identification card is irrelevant to the offense of possessing a firearm without having such card in his possession. See *People v. Cahill*, 37 Ill.App.3d 361, 345 N.E.2d 528 (2d Dist.1976); *People v. Elders*, 63 Ill.App.3d 554, 20 Ill.Dec. 333, 380 N.E.2d 10 (5th Dist.1978).

Section 65/2(a) excludes certain persons from the requirement of possessing a Firearm Owner's Identification Card. See Committee Note to Instruction 18.25, concerning which party bears the burden of proof on the issue.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

**18.27 Definition Of Unlawful Use Of Metal Piercing Bullets**

A person commits the offense of unlawful use of metal piercing bullets when he knowingly [(manufactures) (sells) (purchases) (possesses) (carries)] a metal piercing bullet.

**Committee Note**

720 ILCS 5/24-2.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-2.1 (1991)).

Give Instruction 18.28.

Give Instruction 18.35H, defining the phrase “metal piercing bullet.”

Section 24-2.1(b) exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2.1(c); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase “preponderance of the evidence.”

Use applicable bracketed material.



**18.28 Issues In Unlawful Use Of Metal Piercing Bullets**

To sustain the charge of unlawful use of metal piercing bullets, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(manufactured) (sold) (purchased) (possessed) (carried)] a bullet; and

*Second Proposition:* That at the time the defendant [(manufactured) (sold) (purchased) (possessed) (carried)] the bullet, he knew it was a metal piercing bullet.

If you find from your consideration of all the evidence that these propositions have not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that these propositions have been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that \_\_\_\_\_, you should find the defendant not guilty.]

**Committee Note**

720 ILCS 5/24-2.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-2.1 (1991)).

Give Instruction 18.27.

Give Instruction 18.35H, defining the phrase “metal piercing bullet.”

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.27.

Section 24-2.1 provides that a person commits the offense of unlawful use of metal piercing bullets when he knowingly manufactures, sells, purchases, possesses, or carries a metal piercing bullet. While Section 24-2.1 does require the mental state of knowledge, it does not indicate precisely which elements of the offense require knowledge on the part of the defendant. The statute appears to require that the manufacture, sale, purchase, possession, or carrying be knowing, but is less clear as to whether the defendant must know the bullet is metal piercing. Section 4-3 provides that where, as here, a statute defining an offense prescribes a mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each element of the offense. Since the nature of the bullet is an element of the offense under Section 24-2.1, the Committee is of the opinion that Section 4-3 requires the defendant to have knowledge of the nature of the bullet at the time it is possessed. Therefore, this instruction includes a requirement that the State prove that the defendant had knowledge of the metal piercing nature of the bullet. While the Committee is of the opinion that Sections 4-3 and 24-2.1 requires this result, the Committee is not aware of any reported decision discussing the issue.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 18.29 Definition Of Manufacture, Sale, Or Transfer Of Bullets Represented To Be Metal Piercing Bullets

A person commits the offense of [(manufacture) (sale) (transfer)] of metal piercing bullets when he knowingly [(manufactures) (sells) (offers to sell) (transfers)] any bullet which is represented to be [(metal or armor piercing) (polytetrafluoroethylene-coated) (jacketed and having a core other than lead or lead alloy) (wholly composed of metal or metal alloy other than lead)].

#### Committee Note

720 ILCS 5/24-2.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-2.2 (1991)).

Give Instruction 18.30.

Section 24-2.2(b) exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2.2(c); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase “preponderance of the evidence.”

Use applicable bracketed material.

**18.30 Issues In Manufacture, Sale, Or Transfer Of Bullets Represented To Be Metal Piercing Bullets**

To sustain the charge of [(manufacture) (sale) (transfer)] of bullets represented to be metal piercing bullets, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(manufactured) (sold) (offered to sell) (transferred)] a bullet; and

*Second Proposition:* That the defendant represented such bullet to be [(metal or armor piercing) (polytetrafluoroethylene-coated) (jacketed and having a core other than lead or lead alloy) (wholly composed of a metal or metal alloy other than lead)].

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that \_\_\_\_\_, you should find the defendant not guilty.]

**Committee Note**

720 ILCS 5/24-2.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-2.2 (1991)).

Give Instruction 18.29.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.29.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**18.31 Definition Of Unlawful Discharge Of Metal Piercing Bullets**

A person commits the offense of unlawful discharge of metal piercing bullets when he, knowing that a firearm is loaded with a metal piercing bullet, [(intentionally) (recklessly)] discharges the firearm and the metal piercing bullet strikes another person.

**Committee Note**

720 ILCS 5/24-3.2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-3.2(b) (1991)).

Give Instruction 18.32.

Give Instruction 18.35H, defining the phrase “metal piercing bullet.”

Section 24-3.2(b) incorporates the definition of firearm found in 430 ILCS 65/1.1. As a result, Instruction 18.35G, which defines the word “firearm” in the language of 430 ILCS 65/1.1, should be given.

Section 24-3.2(d) exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When the exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase “preponderance of the evidence.”



**18.32 Issues In Unlawful Discharge Of Metal Piercing Bullets**

To sustain the charge of unlawful discharge of metal piercing bullets, the State must prove the following propositions:

*First Proposition:* That the defendant knew that a firearm was loaded with a metal piercing bullet; and

*Second Proposition:* That the defendant [(intentionally) (recklessly)] discharged the firearm; and

*Third Proposition:* That the discharged metal piercing bullet struck another person.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that \_\_\_\_\_, you should find the defendant not guilty.]

**Committee Note**

720 ILCS 5/24-3.2(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-3.2(b) (1991)).

Give Instruction 18.31.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.31.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 18.33 Definition Of Unlawful Possession Of A Concealed Metal Piercing Bullet And Firearm

A person commits the offense of unlawful possession of a concealed metal piercing bullet and firearm when he knowingly possesses, concealed on or about his person, a metal piercing bullet and a firearm suitable for the discharge of the metal piercing bullet.

#### Committee Note

720 ILCS 5/24-3.2(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-3.2(c) (1991)).

Give Instruction 18.34.

Give Instruction 18.35H, defining the phrase “metal piercing bullet.”

Unlike Section 24-3.2(b), Section 24-3.2(c) does not incorporate the definition of firearm found in 430 ILCS 65/1.1. As a result, the Committee takes no position on whether Instruction 18.35G, defining the word “firearm,” should be given when this charge is before the jury.

The Committee discussed the issue of whether recklessness could suffice as a mental state for this offense based upon the use of the word “recklessly” in Section 24-3.2(a). The Committee was of the opinion that Section 24-3.2(a) is not sufficiently clear to evidence a legislative intent to deviate from the general rule that any possession must be knowing. See Chapter 38, Section 4-2; see also *People v. Woodworth*, 187 Ill.App.3d 44, 134 Ill.Dec. 814, 542 N.E.2d 1321 (5th Dist.1989). As a result, knowledge is the only mental state included in the instruction.

Section 24-3.2(d) exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase “preponderance of the evidence.”

**18.34 Issues In Unlawful Possession Of A Concealed Metal Piercing Bullet And Firearm**

To sustain the charge of unlawful possession of a concealed metal piercing bullet and firearm, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed a bullet; and

*Second Proposition:* That the defendant knew it was a metal piercing bullet; and

*Third Proposition:* That when the defendant did so, he knowingly possessed a firearm; and

*Fourth Proposition:* That the firearm was suitable for the discharge of the metal piercing bullet; and

*Fifth Proposition:* That the metal piercing bullet and the firearm were concealed on or about the defendant's person.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that \_\_\_\_\_, you should find the defendant not guilty.]

**Committee Note**

720 ILCS 5/24-3.2(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-3.2(c) (1991)).

Give Instruction 18.33.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.33.

See the Committee Note to Instruction 18.33 for a discussion of the applicable mental state.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

**18.35 Definition Of Ballistic Knife**

The term “ballistic knife” means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. [It does not include crossbows, common or compound bows, or underwater spearguns.]

**Committee Note**

720 ILCS 5/24-1(a) and (e) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-1(a) and (e) (1991)).

Use bracketed material when appropriate.



**18.35A Definition Of Switchblade Knife**

The term “switchblade knife” means a knife which has a blade that opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

**Committee Note**

720 ILCS 5/24-1(a)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-1(a)(1) (1991))

**18.35B Definition Of Explosive Bullet**

The term “explosive bullet” means the projectile portion of an ammunition cartridge which contains or carries an explosive charge which will explode upon contact with the flesh of a human or an animal.

**Committee Note**

720 ILCS 5/24-1(a)(11) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-1(a)(11) (1991)).

See Instruction 18.35C, defining the word “cartridge.”

**18.35C Definition Of Cartridge**

The word “cartridge” means a tubular metal case having a projectile affixed at the front and a cap or primer at the rear end, with the propellant contained in the tube between the projectile and the cap.

**Committee Note**

720 ILCS 5/24-1(a)(11) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-1(a)(11) (1991))

**18.35D Definition Of Machine Gun**

The term “machine gun” means any weapon which [(shoots) (is designed to shoot) (can be readily restored to shoot)] automatically more than one shot, without manually reloading by a single function of a trigger, including the frame or receiver of such weapon.

**Committee Note**

720 ILCS 5/24-1(a)(7) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-1(a)(7) (1991)).



**18.35E Definition Of Stun Gun Or Taser**

The phrase “stun gun or taser” means

[1] any device which is powered by electrical charging units, such as batteries, and which fires one or several barbs attached to a length of wire and which, upon hitting a human, can send out a current capable of disrupting a person’s nervous system in such a manner as to render him incapable of normal functioning.

[or]

[2] any device which is powered by electrical charging units, such as batteries, and which, upon contact with a human or clothing worn by a human, can send out a current capable of disrupting a person’s nervous system in such a manner as to render him incapable of normal functioning.

**Committee Note**

720 ILCS 5/24-1(a)(10) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-1(a)(10) (1991)).

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**18.35F Definition Of School—Weapons**

The word “school” means any public or private elementary or secondary school, community college, college, or university.

**Committee Note**

720 ILCS 5/24-1(c)(4) (West Supp.1993) and 24-3.3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 24-3.3 (1991)).

**18.35G Definition Of Firearm**

The word “firearm” means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas. [The term does not include \_\_\_\_\_.]

**Committee Note**

430 ILCS 65/1.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 83-1.1 (1991)).

Insert in the blank the name or description of any gun or device excluded from the definition by subsections (1), (2), (3), or (4) of Section 65/1.1.

Use bracketed material when appropriate.

**18.35H Definition Of Metal Piercing Bullet**

The phrase “metal piercing bullet” includes polytetrafluoroethylene-coated bullets, jacketed bullets with other than lead or lead alloy cores, and ammunition of which the bullet is wholly composed of a metal or metal alloy other than lead. [The term does not include shotgun shells.]

**Committee Note**

720 ILCS 5/24-3.2(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-3.2(a) (1991)).

Use bracketed material when appropriate.



**18.35I Definition Of Handgun**

The word “handgun” means a firearm designed to be held and fired by the use of a single hand, and includes a combination of parts from which a firearm can be assembled.

**Committee Note**

720 ILCS 5/24-3(h) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 24-3(h) (1991)).

**18.35J Definition Of Courthouse—Weapons**

The word “courthouse” means any building that is used by the Circuit, Appellate, or Supreme Court of this State for the conduct of official business.

**Committee Note**

720 ILCS 5/24-1(c)(2) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 24-1(c)(2) (1991)), amended by P.A. 88-156, effective July 28, 1993.

**18.35K Definition Of Mental Institution**

The phrase “mental institution” means any hospital, institution, clinic, evaluation facility, mental health center, or part thereof, which is used primarily for the care or treatment of persons with mental illness.

**Committee Note**

*Instruction and Committee Note Approved July 18, 2014*

720 ILCS 5/24-3(A)(e) (West 2013) P.A. 97-1167, effective June 1, 2013.

**18.35L Definition Of Patient In A Mental Institution**

The phrase “patient in a mental institution” means the person was admitted, either voluntarily or involuntarily, to a mental institution for mental health treatment, unless the treatment was voluntary and solely for an alcohol abuse disorder and no other secondary substance abuse disorder or mental illness.

**Committee Note**

*Instruction and Committee Note Approved July 18, 2014*

720 ILCS 5/24-3(A)(e) (West 2013) P.A. 97-1167, effective June 1, 2013.



**18.35M Definition Of Person Engaged In The Business**

The phrase “person engaged in the business” means a person who devotes time, attention, and labor to engaging in the activity as a regular course of trade or business with the principal objective of livelihood and profit, but does not include a person who makes occasional repairs of firearms or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms.

**Committee Note**

*Instruction and Committee Note Approved July 18, 2014*

720 ILCS 5/24-3 (A)(j) (West 2013) P.A. 93-162, effective July 10, 2003.

**18.35N Definition Of With The Principal Objective Of Livelihood And Profit**

The phrase “with the principal objective of livelihood and profit” means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection; however, proof of profit shall not be required as to a person who engaged in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism.

**Committee Note**

*Instruction and Committee Note Approved July 18, 2014*

720 ILCS 5/24-3 (A)(j) (West 2013) P.A. 93-162, effective July 10, 2003.

**18.350 Definition Of School**

The term “school” means a public or private elementary or secondary school, community college, college, or university.

**Committee Note**

*Instruction and Committee Note Approved December 2, 2014*

720 ILCS 5/24-1.2(c) (West 2013).

**18.35P Definition Of School Related Activity**

The phrase “school related activity” means any sporting, social, academic, or other activity for which students’ attendance or participation is sponsored, organized, or funded in whole or in part by a school or school district.

**Committee Note**

*Instruction and Committee Note Approved December 2, 2014*

720 ILCS 5/24-1.2(c) (West 2013).



**18.37 Definition Of Unlawful Discharge Of A Firearm—Discharge In A Cemetery**

A person commits the offense of unlawful discharge of a firearm when he

[1] [(intentionally) (knowingly) (recklessly)] [(hunts) (shoots any gun, pistol, or other missile) (discharges any gun, pistol, or other missile)] within the limits of any cemetery.

[or]

[2] [(intentionally) (knowingly) (recklessly)] causes any shot or missile to be discharged into or over any portion of a cemetery.

**Committee Note**

765 ILCS 835/1(e) (West, 1992) (formerly Ill.Rev.Stat. ch. 21, § 15(e) (1991)).  
Give Instruction 18.38.

Because Section 1(e) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill.2d 15, 169 Ill.Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* *People v. Gean*, 143 Ill.2d 281, 158 Ill.Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill.2d 397, 168 Ill.Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill.2d 322, 60 Ill.Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Section 1(g) of the statute excludes “the discharge of firearms loaded with blank ammunition as part of any funeral, any memorial observance or any other patriotic or military ceremony.”

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

### 18.38 Issues In Unlawful Discharge Of A Firearm—Discharge In A Cemetery

To sustain the offense of unlawful discharge of a firearm, the State must prove the following proposition:

[1] That the defendant [(intentionally) (knowingly) (recklessly)] [(hunted) (shot a gun, pistol, or other missile) (discharged a gun, pistol, or other missile)] within the limits of a cemetery.

[or]

[2] That the defendant [(intentionally) (knowingly) (recklessly)] caused any shot or missile to be discharged into or over any portion of a cemetery.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

765 ILCS 835/1(e) (West, 1992) (formerly Ill.Rev.Stat. ch. 21, § 15(e) (1991)), amended by P.A. 87-527, effective September 16, 1991.

Give Instruction 18.37.

Because Section 1(e) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill.2d 15, 169 Ill.Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see People v. Gean*, 143 Ill.2d 281, 158 Ill.Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill.2d 397, 168 Ill.Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill.2d 322, 60 Ill.Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**18.39 Definition Of Unlawful Sale Of Firearms By Liquor Licensee**

A person commits the offense of unlawful sale of firearms by a liquor licensee when he [(holds) (is an agent or employee of a person who holds)] a license issued by the [(Illinois Liquor Control Commission) (local liquor control commissioner)] to sell at retail any alcoholic liquor and [(knowingly) (intentionally) (recklessly)] [(sells) (delivers)] a firearm to any other person [(in) (on)] the real property where the licensee is licensed to sell alcoholic liquors.

**Committee Note**

720 ILCS 5/24-3.4 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 24-3.4 (1991)), added by P.A. 87-591, effective January 1, 1992.

Give Instruction 18.40.

Because Section 24-3.4 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill.2d 15, 169 Ill.Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* *People v. Gean*, 143 Ill.2d 281, 158 Ill.Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill.2d 397, 168 Ill.Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill.2d 322, 60 Ill.Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Section 24-3.4 exempts certain persons from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 5/24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the term “preponderance of the evidence.”

Use applicable bracketed material.



## 18.40 Issues In Unlawful Sale Of Firearms By Liquor Licensee

To sustain the charge of unlawful sale of firearms by a liquor licensee, the State must prove the following propositions:

*First Proposition:* That the defendant [(intentionally) (knowingly) (recklessly)] [(sold) (delivered)] a firearm to another person; and

*Second Proposition:* That when the defendant did so, he [(held a license) (was an agent or employee of a person who held a license)] to sell alcoholic liquor at retail issued by the [(Illinois Liquor Control Commission) (local liquor control commissioner)]; and

*Third Proposition:* That when the defendant did so, he was [(in) (on)] the real property of the establishment where [(he) (the licensee)] is licensed to sell alcoholic liquors.

If you find from your consideration of the evidence that each one of these propositions have been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 5/24-3.4 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 24-3.4 (1991)), added by P.A. 87-591, effective January 1, 1992.

Give Instruction 18.39.

Because Section 24-3.4 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill.2d 15, 169 Ill.Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* *People v. Gean*, 143 Ill.2d 281, 158 Ill.Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill.2d 397, 168 Ill.Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill.2d 322, 60 Ill.Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**18.41 Definition Of Reckless Discharge Of A Firearm**

A person commits the offense of reckless discharge of a firearm when he

[1] discharges a firearm in a reckless manner which endangers the bodily safety of an individual.

[or]

[2] is a driver of a moving motor vehicle and he knows of and consents to his passenger discharging a firearm in a reckless manner which endangers the bodily safety of an individual.

**Committee Note**

720 ILCS 5/24-1.5 (West, 1992), added by P.A. 88-217, effective August 6, 1993.

Give Instruction 18.42.

Give Instruction 23.43B, defining the term “motor vehicle”, if an issue arises as to whether the defendant was the driver of a motor vehicle or another person was a passenger in a motor vehicle.

Use applicable paragraph.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

## 18.42 Issues In Reckless Discharge Of A Firearm

To sustain the charge of reckless discharge of a firearm, the State must prove the following propositions:

[1] *First Proposition:* That the defendant discharged a firearm in a reckless manner; and

*Second Proposition:* That when the defendant did so, he endangered the bodily safety of an individual.

[or]

[2] *First Proposition:* That the defendant was the driver of a moving motor vehicle; and

*Second Proposition:* That the defendant knew of and consented to his passenger discharging a firearm in a reckless manner; and

*Third Proposition:* That when the passenger did so, the bodily safety of an individual was endangered.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 5/24-1.5 (West, 1992), added by P.A. 88-217, effective August 6, 1993.

Give Instruction 18.41.

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**18.43 Definition Of Gunrunning**

A person commits the offense of gunrunning when he transfers three or more firearms by [any combination of]:

[A] knowingly [(selling) (giving)] a firearm of a size which may be concealed upon the person to any person who is under 18 years of age [(, and) (.)]

[or]

[B] knowingly [(selling) (giving)] a firearm to any person who is under 21 years of age and who has been [(convicted of the offense of \_\_\_\_\_) (adjudged delinquent)] [(, and) (.)]

[or]

[C] knowingly [(selling) (giving)] a firearm to any person who is a narcotic addict [(, and)(.)] [or]

[D] knowingly [(selling) (giving)] a firearm to any person who has been convicted of a felony [(, and) (.)]

[or]

[E] knowingly [(selling) (giving)] a firearm to any person who has been a patient in a mental hospital within the past 5 years [(, and) (.)]

[or]

[F] knowingly [(selling) (giving)] a firearm to any person who is mentally retarded [(, and)(.)]

[or]

[G] knowingly delivering a firearm of a size which may be concealed upon the person, incidental to a sale, without withholding delivery of such firearm for at least 72 hours after application for its purchase has been made [(, and) (.)]

[or]

[H] knowingly delivering a [(rifle) (shotgun) [or other long gun]], incidental to a sale, without withholding delivery of such [(rifle) (shotgun) [or other long gun]] for at least 24 hours after application for its purchase has been made [(, and) (.)]

[or]

[I] while holding a license under the Federal Gun Control Act of 1968, as amended, as [(a) (an)] [(dealer) (importer) (manufacturer) (pawnbroker)], knowingly [(manufacturing) (selling to any unlicensed person) (delivering to any unlicensed person)] a handgun having a [(barrel) (slide) (frame) (receiver)] which is a die casting of zinc alloy or other nonhomogenous metal which will melt or deform at a temperature of less than 800 degrees Fahrenheit [(, and) (.)]

[or]

[J] knowingly [(selling) (giving)] a firearm to a person under 18 years of age who

does not possess a valid Firearm Owner's Identification Card.

#### Committee Note

720 ILCS 5/24-3A (West, 1994), added by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.44.

The bracketed phrase "or other long gun" in paragraph [H] should be used only when a question is raised as to the precise nature of the weapon involved and then only in conjunction with the word "rifle" or "shotgun."

If paragraph [I] is given, give Instruction 18.35G, defining the word "firearm," and Instruction 18.35I, defining the word "handgun."

The offense of gunrunning requires a violation of Section 24-3 (unlawful sale of firearms). Sections 24-3(g) and (j) exempt certain persons and transactions from criminal liability. The defendant bears the burden of proving the exemption by a preponderance of the evidence. See Section 24-2(h); see also *People v. Smith*, 71 Ill.2d 95, 15 Ill.Dec. 864, 374 N.E.2d 472 (1978). When an exemption is raised by the defendant, give Instruction 18.01A, defining the applicable exemption, and Instruction 4.18, defining the phrase "preponderance of the evidence."

Use applicable paragraphs and bracketed material.

The bracketed letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**18.44 Issues In Gunrunning**

To sustain the charge of gunrunning, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly transferred three or more firearms; and

*Second Proposition:* That when the defendant transferred these firearms, he did so in the following way[s]:

[A] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second:* That the firearm was of a size which may be concealed upon a person; and

*Third:* That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

*Fourth:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age.

[or]

[B] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second:* That the person to whom the defendant [(sold) (gave)] the firearm was under 21 years of age; and

*Third:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 21 years of age; and

*Fourth:* That the person to whom the defendant [(sold) (gave)] the firearm had been [(convicted of the offense of \_\_\_\_\_) (adjudged delinquent)]; and

*Fifth:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been [(convicted of the offense of \_\_\_\_\_) (adjudged delinquent)].

[or]

[C] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second:* That the person to whom the defendant [(sold) (gave)] the firearm was a narcotic addict; and

*Third:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm was a narcotic addict.

[or]

[D] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second:* That the person to whom defendant [(sold) (gave)] the firearm had been convicted of the offense of \_\_\_\_\_; and

*Third:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been convicted of the offense of \_\_\_\_\_.

[or]

[E] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second:* That the person to whom the defendant [(sold) (gave)] the firearm had been

a patient in a mental hospital within the past 5 years; and

*Third:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm had been a patient in a mental hospital within the past 5 years.

[or]

[F] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second:* That the person to whom the defendant [(sold) (gave)] the firearm was mentally retarded; and

*Third:* That the defendant knew the person to whom he [(sold) (gave)] the firearm was mentally retarded.

[or]

[G] *First:* That the defendant knowingly delivered, incidental to a sale, a firearm of a size which may be concealed upon the person; and

*Second:* That the defendant delivered such firearm within 72 hours after application for its purchase had been made.

[or]

[H] *First:* That the defendant knowingly delivered, incidental to a sale, a [(rifle) (shotgun) [or other long gun]]; and

*Second:* That the defendant delivered such [(rifle) (shotgun) [or other long gun]] within 24 hours after application for its purchase had been made.

[or]

[I] *First:* That the defendant knowingly [(manufactured) (sold) (delivered)] to an unlicensed person a handgun having a [(barrel) (slide) (frame) (receiver)] which is a die casting of a zinc alloy or other nonhomogenous metal which melts or deforms at a temperature of less than 800 degrees Fahrenheit; and

*Second:* That the defendant held a license under the Federal Gun Control Act of 1968 as a[n] [(dealer) (importer) (manufacturer) (pawnbroker)].

[or]

[J] *First:* That the defendant knowingly [(sold) (gave)] a firearm to another; and

*Second:* That the person to whom the defendant [(sold) (gave)] the firearm was under 18 years of age; and

*Third:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm was under 18 years of age; and

*Fourth:* That the person to whom the defendant [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card; and

*Fifth:* That the defendant knew that the person to whom he [(sold) (gave)] the firearm did not possess a valid Firearm Owner's Identification Card.

If you find from your consideration of all the evidence that any one of these

propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. [However, if you find the defendant has proved by a preponderance of the evidence that \_\_\_\_\_, you should find the defendant not guilty.]

#### **Committee Note**

720 ILCS 5/24-3A (West, 1994), added by P.A. 88-680, effective January 1, 1995.

Give Instruction 18.43.

Give the bracketed portion of the last paragraph when evidence of an exemption is presented. Insert in the blank the applicable exemption. See Committee Note to Instruction 18.43.

See Committee Note to Instruction 18.43 for appropriate use of the bracketed phrase “or other long gun” and the need for additional definition instructions.

Insert in the blank in the Fourth and Fifth Propositions in the second set of propositions (alternative [B]) the misdemeanor conviction other than a traffic offense.

Insert in the blank in the Second and Third Propositions in the fourth set of propositions (alternative [D]) the felony conviction.

The offense of gunrunning defined in Section 24-3A requires violations of Section 24-3 which, in part, provides that a person commits the offense of unlawful sale of firearms when he knowingly transfers a firearm to a person prohibited from possessing a firearm by reason of age, mental condition, prior convictions, or prior adjudication of delinquency. While Section 24-3 does require the mental state of knowledge, it does not indicate precisely which elements of the offense require knowledge on the part of the defendant. The statute appears to require that the transfer of the firearm be knowingly made but is less clear as to whether the defendant must also have knowledge of the status of the transferee as underage, a former mental patient, mentally retarded, or possessing a prior conviction or adjudication of delinquency. Section 4-3 of the Criminal Code provides that where, as here, a statute defining an offense prescribes a mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each element of the offense. See 720 ILCS 5/4-3 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 4-3 (1991)). Because the status of the transferee is an element of the crime under Section 24-3, the Committee believes that Section 4-3 requires the defendant to have knowledge of that status at the time the firearm is transferred. Therefore, this instruction includes a requirement that the State prove that the defendant had knowledge of the relevant status of the person to whom the firearm was transferred. While the Committee believes that Sections 4-3 and 24-3 require this result, the Committee is not aware of any reported decision discussing the issue.

Use applicable paragraphs and bracketed material.



The bracketed letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.





# **Chapter 19.00**

## **MOB ACTION**

### **SYNOPSIS**

- 19.01 Definition Of Mob Action—Unlawful Assembly**
- 19.02 Issues In Mob Action—Unlawful Assembly**
- 19.03 Definition Of Mob Action—Violent Infliction Of Injury**
- 19.04 Issues In Mob Action—Violent Infliction Of Injury**
- 19.05 Definition Of Mob Action—Failure To Withdraw**
- 19.06 Issues In Mob Action—Failure To Withdraw**
- 19.07 Definition Of Disorderly Conduct**
- 19.08 Issues In Disorderly Conduct**
- 19.09 Definition Of Harassment By Telephone**
- 19.10 Issues In Harassment By Telephone**
- 19.11 Definition Of Residential Picketing**
- 19.12 Issues In Residential Picketing**

**19.01 Definition Of Mob Action—Unlawful Assembly**

A person commits the offense of mob action when he

[1] acting together with one or more persons and without authority of law [(knowingly) (intentionally) (recklessly)] disturbs the public peace by the use of force or violence.

[or]

[2] assembles with one or more persons to do an unlawful act, [(knowing) (intending)] that the purpose of assembling was to perform the unlawful act.

[or]

[3] assembles with one or more persons without authority of law, [(knowing) (intending)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed to have been guilty of a violation of the law) (was to exercise correctional powers or regulative powers over any person by violence)].

**Committee Note**

720 ILCS 5/25-1(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 25-1(a) (1991)).

Give Instruction 19.02.

Give Instructions 5.01, 5.01A, and 5.01B, defining the words “recklessness,” “intent,” and “knowledge” respectively, when appropriate.

Mental states have been inserted to conform with *People v. Leach*, 3 Ill. App. 3d 389, 279 N.E.2d 450 (1st Dist. 1972). See also *Landry v. Daley*, 280 F. Supp. 938 (N.D.Ill.1968), *reversed on other grounds*, 401 U.S. 77, 91 S. Ct. 758, 27 L. Ed. 2d 696 (1971); *People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

P.A. 86-863, effective January 1, 1990, raised the grade of offense for violations of Section 25-1(a)(1) from a misdemeanor to a felony. Violations of Sections 25-1(a)(2) and (a)(3) remain misdemeanor offenses. See Chapter 720, Sections 25-1(b) and (c).

When the jury is given both Instruction 19.01 and either Instruction 19.03 or Instruction 19.05, the verdict forms should reflect the specific names of these crimes as reflected in the instructions, *e.g.*, “Mob Action—Unlawful Assembly” and “Mob Action—Failure to Withdraw.”

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

## 19.02 Issues In Mob Action—Unlawful Assembly

To sustain the charge of mob action, the State must prove the following propositions:

*First Proposition:* That the defendant acted together with one or more persons without authority of law; and

*Second Proposition:* That the defendant [(knowingly) (intentionally) (recklessly)] disturbed the public peace by the use of force or violence.

[or]

*First Proposition:* That the defendant assembled with one or more persons to do \_\_\_\_\_; and

*Second Proposition:* That the defendant [(knew) (intended)] that the purpose of assembling was to perform \_\_\_\_\_.

[or]

*First Proposition:* That the defendant assembled with one or more persons without authority of law; and

*Second Proposition:* That the defendant [(knew) (intended)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed have been guilty of a violation of the law) (was to exercise correctional powers or regulative powers over any person by violence)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 5/25-1(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 25-1(a) (1991)).

Give Instruction 19.01.

When applicable, insert in the blanks the alleged unlawful act.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**19.03 Definition Of Mob Action—Violent Infliction Of Injury**

A person commits the offense of mob action involving the violent infliction of injury when he

[1] acting together with one or more persons and without authority of law [(knowingly) (intentionally) (recklessly)] disturbs the public peace by the use of force or violence;

[or]

[2] assembles with one or more persons to do an unlawful act, [(knowing) (intending)] that the purpose of assembling was to perform the unlawful act;

[or]

[3] assembles with one or more persons without authority of law, [(knowing) (intending)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed to have been guilty of a violation of law) (was to exercise correctional powers or regulative powers over any person by violence)];

and

one of the participants in the mob action violently inflicts injury to the [(person) (property)] of another.

**Committee Note**

720 ILCS 5/25-1(a) and (d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 25-1(a) and (d) (1991)).

Give Instruction 19.04.

Give Instructions 5.01, 5.01A, and 5.01B, defining the words “recklessness,” “intent,” and “knowledge” respectively, when appropriate.

When the jury is given both Instruction 19.01 and either Instruction 19.03 or Instruction 19.05, the verdict forms should reflect the specific names of these crimes as reflected in the instructions, e.g., “Mob Action—Unlawful Assembly” and “Mob Action—Violent Infliction of Injury.”

Mental states have been inserted to conform with *People v. Leach*, 3 Ill. App. 3d 389, 279 N.E.2d 450 (1st Dist. 1972). See also *Landry v. Daley*, 280 F. Supp. 938 (N.D.Ill.1968), *reversed on other grounds*, 401 U.S. 77, 91 S. Ct. 758, 27 L. Ed. 2d 696 (1971); *People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### 19.04 Issues In Mob Action—Violent Infliction Of Injury

To sustain the charge of mob action involving violent infliction of injury the State must prove the following propositions:

*First Proposition:* That the defendant acted together with one or more persons without authority of law; and

*Second Proposition:* That the defendant [(knowingly) (intentionally) (recklessly)] disturbed the public peace by the use of force or violence; and

*Third Proposition:* That one of the participants in the mob action violently inflicted injury upon the [(person) (property)] of another.

[or]

*First Proposition:* That the defendant assembled with one or more persons to do \_\_\_\_\_; and

*Second Proposition:* That the defendant [(knew) (intended)] that the purpose of assembling was to perform \_\_\_\_\_; and

*Third Proposition:* That one of the participants in the mob action violently inflicted injury upon the [(person) (property)] of another.

[or]

*First Proposition:* That the defendant assembled with one or more persons without authority of law; and

*Second Proposition:* That the defendant [(knew) (intended)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed to have been guilty of a violation of law) (was to exercise correctional powers or regulative powers over any person by violence)]; and

*Third Proposition:* That one of the participants in the mob action violently inflicted injury upon the [(person) (property)] of another.

If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/25-1(a) and (c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 25-1(a) and (c) (1991)).

Give Instruction 19.03.

When applicable, insert in the blanks the alleged unlawful act.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 19.05 Definition Of Mob Action—Failure To Withdraw

A person commits the offense of mob action involving the failure to withdraw when he

[1] acting together with one or more persons and without authority of law [(knowingly) (intentionally) (recklessly)] disturbs the peace by the use of force or violence;

[or]

[2] assembles with one or more persons to do an unlawful act, [(knowing) (intending)] that the purpose of assembling was to perform the unlawful act;

[or]

[3] assembles with one or more persons without authority of law, [(knowing) (intending)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed to have been guilty of a violation of the law) (was to exercise correctional powers or regulative powers over any person by violence)];

and

the defendant fails to withdraw from the mob action on being commanded to do so by a peace officer.

#### Committee Note

720 ILCS 5/25-1(a) and (e) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 25-1(a) and (e) (1991)).

Give Instruction 19.06.

Give Instruction 4.08, defining the term “peace officer.”

Give Instructions 5.01, 5.01A, and 5.01B, defining the words “recklessness,” “intent,” and “knowledge” respectively, when appropriate.

When the jury is given both Instruction 19.01 and either Instruction 19.03 or Instruction 19.05, the verdict forms should reflect the specific names of these crimes as reflected in the instructions, e.g., “Mob Action—Unlawful Assembly” and “Mob Action—Failure to Withdraw.”

Mental states have been inserted to conform with *People v. Leach*, 3 Ill. App. 3d 389, 279 N.E.2d 450 (1st Dist. 1972). See also *Landry v. Daley*, 280 F. Supp. 938 (N.D.Ill. 1968), *reversed on other grounds*, 401 U.S. 77, 91 S. Ct. 758, 27 L. Ed. 2d 696 (1971); *People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**19.06 Issues In Mob Action—Failure To Withdraw**

To sustain the charge of mob action involving the failure to withdraw the State must prove the following propositions:

*First Proposition:* That the defendant acted together with one or more persons without authority of law; and

*Second Proposition:* That the defendant [(knowingly) (intentionally) (recklessly)] disturbed the public peace by the use of force or violence; and

*Third Proposition:* That the defendant failed to withdraw from the mob action on being commanded to do so by a peace officer.

[or]

*First Proposition:* That the defendant assembled with one or more persons to do \_\_\_\_\_; and

*Second Proposition:* That the defendant [(knew) (intended)] that the purpose of assembling was to perform \_\_\_\_\_; and

*Third Proposition:* That the defendant failed to withdraw from the mob action on being commanded to do so by a peace officer.

[or]

*First Proposition:* That the defendant assembled with one or more persons without authority of law; and

*Second Proposition:* That the defendant [(knew) (intended)] that the purpose of assembling [(was to do violence to the person or property of anyone supposed to have been guilty of a violation of law) (was to exercise correctional powers or regulative powers over any person by violence)]; and

*Third Proposition:* That the defendant failed to withdraw from the mob action on being commanded to do so by a peace officer.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/25-1(a) and (d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 25-1(a) and (d) (1991)).

Give Instruction 19.05.

When applicable, insert in the blanks the alleged unlawful act.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**19.07 Definition Of Disorderly Conduct**

A person commits the offense of disorderly conduct when he knowingly

[1] does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace.

[or]

[2] transmits to a fire department of any city, town, village, or fire protection district a false alarm of fire, knowing there is no reasonable ground for believing that a fire exists.

[or]

[3] transmits to another a false alarm that a bomb or other explosive is concealed in such a place that its explosion would endanger human life, knowing there is no reasonable ground for believing that a bomb or explosive is concealed in such a place.

[or]

[4] transmits to any [(peace officer) (public officer) (public employee)] a report that an offense has been committed, knowing there is no reasonable ground for believing that such an offense has been committed.

[or]

[5] enters upon the property of another and, for a lewd or unlawful purpose, deliberately looks into a dwelling on the property through any window or opening in it.

[or]

[6] while acting as a collection agency or as an employee of such collection agency and while attempting to collect an alleged debt, makes a telephone call to an alleged debtor which is designed to harass, annoy, or intimidate the alleged debtor.

[or]

[7] transmits a false report to the Department of Children and Family Services that \_\_\_\_\_.

[or]

[8] transmits a false report to the Department of Public Health that \_\_\_\_\_.

[or]

[9] transmits to a [(police department) (fire department of any municipality or fire protection district) (privately owned and operated ambulance service)] a false request for an [(ambulance) (emergency medical technician-ambulance) (emergency medical technician-paramedic)] knowing there is no reasonable ground for believing that such assistance is required.

[or]

[10] transmits a false report to the Department of Aging of the State of Illinois that \_\_\_\_\_.

**Committee Note**

720 ILCS 5/26-1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 26-1 (1991)).  
Give Instruction 19.08.

When paragraph [4] is used, give Instruction 4.08, defining the term “peace officer.”

Insert in the blank in paragraph [7] the applicable type(s) of false report(s).

Insert in the blank in paragraph [8] the applicable type(s) of false report(s) defined in 210 ILCS 45/1-101 *et seq.*

Insert in the blank in paragraph [10] the applicable type(s) of false report(s) defined in 320 ILCS 15/1 *et seq.*

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**19.08 Issues In Disorderly Conduct**

To sustain the charge of disorderly conduct, the State must prove the following proposition[s]:

[1] That the defendant knowingly performed an act in such an unreasonable manner as to alarm or disturb another and provoke a breach of the peace.

[or]

[2] *First Proposition:* That the defendant knowingly transmitted to a fire department of any city, town, village, or fire protection district a false alarm of a fire; and

*Second Proposition:* That the defendant did so knowing that there was no reasonable ground for believing that a fire existed.

[or]

[3] *First Proposition:* That the defendant knowingly transmitted to another a false alarm that a bomb or another explosive was concealed in such a place that its explosion would endanger human life; and

*Second Proposition:* That the defendant did so knowing that there was no reasonable ground for believing that a bomb or explosive was concealed in that place.

[or]

[4] *First Proposition:* That the defendant knowingly transmitted to a [(peace officer) (public officer) (public employee)] a report that an offense had been committed; and

*Second Proposition:* That the defendant did so knowing that there was no reasonable ground for believing that such an offense had been committed.

[or]

[5] That the defendant knowingly entered upon the property of another and, for a lewd or unlawful purpose, deliberately looked into a dwelling on the property through any window or other opening in it.

[or]

[6] That the defendant, while acting as a collection agency or as an employee of such collection agency, and while attempting to collect an alleged debt, knowingly made a telephone call to an alleged debtor which was designed to harass, annoy, or intimidate the alleged debtor.

[or]

[7] That that defendant knowingly transmitted a false report to the Department of Children and Family Services that \_\_\_\_\_.

[or]

[8] That the defendant knowingly transmitted a false report to the Department of Public Health that \_\_\_\_\_.

[or]

[9] That the defendant knowing transmitted to a [(police department) (fire department

of any municipality or fire protection district) (privately owned and operated ambulance service)] a false request for an [(ambulance) (emergency medical technician-ambulance) (emergency medical technician-paramedic)] knowing there was no reasonable ground for believing that such assistance is required.

[or]

[10] That the defendant knowingly transmitted a false report to the Department of Aging of the State of Illinois that \_\_\_\_\_.

If you find from your consideration of all the evidence that [(each one of these propositions) (this proposition)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(any one of these propositions) (this proposition)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/26-1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 26-1 (1991)).

Give Instruction 19.07.

When applicable, insert in the blanks the appropriate acts. See Committee Note to Instruction 19.03 to determine the appropriate act(s) to put in the blanks.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

**19.09 Definition Of Harassment By Telephone**

A person commits the offense of harassment by telephone when he

[1] uses a telephone communication for the purpose of making any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent with an intent to offend.

[or]

[2] makes a telephone call, whether or not conversation ensues, with the intent to abuse, threaten, or harass any person at the called number.

[or]

[3] makes or causes the telephone of another to ring repeatedly, with the intent to harass any person at the called number.

[or]

[4] makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number.

[or]

[5] knowingly permits any telephone under his control to be used for the purpose of

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**Committee Note**

720 ILCS 135/1-1 (West 1999) (formerly Ill. Rev. Stat. ch. 134, § 16.4-1 (1991)).  
Give Instruction 19.10.

See *People v. Parkins*, 77 Ill. 2d 253, 32 Ill. Dec. 909, 396 N.E.2d 22 (1979).

When paragraph [5] is given, insert in the blank the appropriate definition contained in the first four paragraphs.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

## 19.10 Issues In Harassment By Telephone

To sustain the charge of harassment by telephone, the State must prove the following propositions:

*First Proposition:* That the defendant [(used a telephone) (knowingly permitted a telephone under his control to be used)]; and

*Second Proposition:* That the defendant did so for the purpose of making any comment, request, suggestions, or proposal which was obscene, lewd, lascivious, filthy, or indecent; and

*Third Proposition:* That the defendant did so intending to offend.

[or]

*Second Proposition:* That the defendant did so for the purpose of making a telephone call, whether or not conversation ensued; and

*Third Proposition:* That the defendant did so intending to abuse, threaten, or harass any person at the called number.

[or]

*Second Proposition:* That the defendant did so for the purpose of making or causing the telephone of another to ring repeatedly; and

*Third Proposition:* That the defendant did so intending to harass any person at the called number.

[or]

*Second Proposition:* That the defendant did so for the purpose of making repeated telephone calls, during which conversation ensued; and

*Third Proposition:* That the defendant did so intending solely to harass any person at the called number.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 135/1-1 (West 1999) (formerly Ill. Rev. Stat. ch. 134, § 16.4-1 (1991)).

Give Instruction 19.09.

When paragraph [5] of Instruction 19.09, the definitional instruction for this offense, is given, use the phrase “knowingly permitted a telephone under his control to be used” in the First Proposition.

Use applicable bracketed material.



When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 19.11 Definition Of Residential Picketing

A person commits the offense of residential picketing when he pickets before or about the [(residence) (dwelling)] of any person and that [(residence) (dwelling)] is not used as a place of business.

#### Committee Note

720 ILCS 5/21.1-2 (West 1992) (formerly Ill. Rev. Stat., ch. 38, § 21.1-2 (1991)).

Give Instruction 19.12.

Note the exclusions in Section 21.1-1 regarding peacefully picketing one's own residence and peacefully picketing before or about the place of a meeting or assembly on premises commonly used to discuss subjects of general public interest.

In *People v. McQueen*, 241 Ill. App. 3d 509, 517, 181 Ill. Dec. 859, 864, 608 N.E.2d 1333, 1338 (4th Dist.1993), the court held that the State must prove that the residence was not "used as a place of business" as an element in all cases because that language in the statute is "descriptive of the offense." The court added parenthetically that because the other two exclusions "are not 'descriptive of the offense,' \*\*\* the State need not prove the absence of those exceptions in the absence of some evidence thereon being presented by the defense." (Emphasis deleted.) *McQueen*, 241 Ill. App. 3d at 517, 608 N.E.2d at 1338-39, 181 Ill. Dec. at 864-65.

Use applicable bracketed material.

**19.12 Issues In Residential Picketing**

To sustain the charge of residential picketing, the State must prove the following propositions:

*First Proposition:* That the defendant picketed; and

*Second Proposition:* That the defendant did so before or about a [(residence) (dwelling)]; and

*Third Proposition:* That the [(residence) (dwelling)] was not used as a place of business.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/21.1-2 (West 1992) (formerly Ill. Rev. Stat., ch. 38, § 21.1-2 (1991)).

Give Instruction 19.11 and see the Committee Note to that instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

## Chapter 20.00

# GAMBLING

### SYNOPSIS

20.01	Definition Of Gambling
20.01A	Definition Of A Gambling Device
20.01B	Definition Of Lottery
20.01C	Definition Of Policy Game
20.02	Issues In Gambling
20.03	Definition Of Keeping A Gambling Place
20.04	Issues In Keeping A Gambling Place
20.05	Definition Of Syndicated Gambling—Policy
20.06	Issues In Syndicated Gambling—Policy
20.07	Definition Of Syndicated Gambling—Bookmaking
20.08	Issues In Syndicated Gambling—Bookmaking



**20.01 Definition Of Gambling**

A person commits the offense of gambling when he

[1] plays a game of chance or skill for money or other things of value.

[or]

[2] makes a wager upon the result of any [(game) (contest) (political nomination) (political appointment) (political election)].

[or]

[3] [(operates) (keeps) (owns) (uses) (purchases) (exhibits) (rents) (sells) (bargains for the sale or lease of) (manufactures) (distributes)] any gambling device.

[or]

[4] contracts to [(have or give himself or another the option to buy or sell) (buy or sell, at a future time,)] any [(grain or other commodity whatsoever) (stock or security of any company)], where, at the time of making such contract, it is intended by both parties thereto that the contract to buy or sell, or the option, whenever exercised, or the contract resulting therefrom, shall be settled, not by the receipt or delivery of such property, but by the payment only of differences in prices.

[or]

[5] knowingly [(owns) (possesses)] any [(book) (instrument) (apparatus)] by means of which bets or wagers [(have been) (are)] [(recorded) (registered)].

[or]

[6] knowingly possesses any money which he has received in the course of a bet or wager.

[or]

[7] sells pools upon the result of any [(game or contest of skill or chance) (political nomination) (political appointment) (political election)].

[or]

[8] [(sets up) (promotes)] any lottery or [(sells) (offers to sell) (transfers)] any [(lottery ticket) (share of a lottery)].

[or]

[9] [(sets up) (promotes)] any policy game or [(sells) (offers to sell) (knowingly possesses) (knowingly transfers)] any [(policy ticket) (policy slip) (policy record) (policy document) [or other similar device]].

[or]

[10] knowingly [(drafts) (prints) (publishes)] any [(lottery ticket) (lottery share) (policy ticket) (policy slip) (policy record) (policy document) [or similar device]].

[or]

[11] knowingly advertises any [(lottery) (policy game)].

[or]

[12] knowingly transmits information as to [(wagers) (betting odds) (changes in betting odds)] by [(telephone) (telegraph) (radio) (semaphore) [or similar means]].

[or]

[13] knowingly [(installs) (maintains)] equipment for the [(transmission) (receipt)] of information as to [(wagers) (betting odds) (changes in betting odds)].

#### Committee Note

720 ILCS 5/28-1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 28-1 (1991)).

Give Instruction 20.02.

When the charge alleges the use of similar devices or similar means, give all the types of devices or means within the brackets.

Note the exception in Section 28-1(a)(4), regarding options or contracts to buy or sell.

Note the exception in Section 28-1(a)(9), regarding activities authorized by or conducted in accordance with the law.

Note the exception in Section 28-1(a)(10), regarding activities authorized by or conducted in accordance with the law.

Note the exception in Section 28-1(a)(11), regarding news reporting.

Note the exclusions contained in Section 28-1(b).

See Instruction 20.01A, defining the term “gambling device.”

See Instruction 20.01B, defining the word “lottery.”

See Instruction 20.01C, defining the term “policy game.”

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**20.01A Definition Of A Gambling Device**

The term “gambling device” means

[1] any clock, tape machine, slot machine, or other machines or device for the reception of money or other thing of value on chance or skill, or upon the action of which money or other thing of value is staked, hazarded, bet, won, or lost.

[or]

[2] any mechanism, furniture, fixture, equipment, or other device designed primarily for use in a gambling place.

**Committee Note**

720 ILCS 5/28-2(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 28-2(a) (1991)).

Give this instruction with paragraph [3], [9], or [10] of Instruction 20.01.

See Chapter 720, Sections 28-2(a)(1), (a)(2), and (a)(3) for exclusions to the definition of a gambling device.

Use applicable paragraphs.

**20.01B Definition Of Lottery**

The word “lottery” means a scheme or procedure by which one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prizes, whether the scheme or procedure is called a lottery, raffle, gift, sale, or some other name

**Committee Note**

720 ILCS 5/28-2(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 28-2(b) (1991)).

Give this instruction with paragraph [8], [10], or [11] of Instruction 20.01.

See *People v. Eagle Food Centers, Inc.*, 31 Ill. 2d 535, 202 N.E.2d 473 (1964).



**20.01C Definition Of Policy Game**

The term “policy game” means any scheme or procedure by which a person promises or guarantees by any instrument, bill, certificate, writing, token, or other device that any particular number, character, ticket, or certificate shall, in the event of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property, or evidence of debt.

**Committee Note**

720 ILCS 5/28-2(c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 28-2(c) (1991)).

Give this instruction with paragraph [9] or [11] of Instruction 20.01.

## 20.02 Issues In Gambling

To sustain the charge of gambling, the State must prove the following proposition[s]:

[1] That the defendant played a game of chance or skill for money or other thing of value.

[or]

[2] That the defendant made a wager upon the result of any [(game) (contest) (political nomination) (political appointment) (political election)].

[or]

[3] That the defendant [(operated) (kept) (owned) (used) (purchased) (exhibited) (rented) (sold) (bargained for the sale or lease of) (manufactured) (distributed)] any gambling device.

[or]

[4] *First Proposition:* That the defendant contracted to [(have or give himself or another the option to buy or sell) (buy or sell, at a future time)] any [(grain or other commodity whatsoever) (stock or security of any company)]; and

*Second Proposition:* That, at the time of making such contract, both parties thereto intended that the contract to buy or sell, or the option whenever exercised, or the contract resulting therefrom, would be settled, not by the receipt or delivery of such property, but by the payment only of differences in prices.

[or]

[5] That the defendant knowingly [(owned) (possessed)] any [(book) (instrument) (apparatus)] by means of which bets or wagers [(had been) (were)] [(recorded) (registered)].

[or]

[6] That the defendant knowingly possessed any money which he had received in the course of a bet or wager.

[or]

[7] That the defendant sold polls upon the result of any [(game or contest of skill or chance) (political nomination) (political appointment) (political election)].

[or]

[8] That the defendant set up or promoted any lottery or [(sold) (offered to sell) (transferred)] any [(lottery ticket) (share of a lottery)].

[or]

[9] That the defendant [(set up) (promoted)] any policy game or [(sold) (offered to sell) (knowingly possessed) (knowingly transferred)] any [(policy ticket) (policy slip) (policy record) (policy document) [or similar device]].

[or]

[10] That the defendant knowingly [(drafted) (printed) (published)] any [(lottery

ticket) (lottery share) (policy ticket) (policy slip) (policy record) (policy document) [or other similar device]].

[or]

[11] That the defendant knowingly advertised any [(lottery) (policy game)].

[or]

[12] *First Proposition:* That the defendant knowingly transmitted information as to [(wagers) (betting odds) (changes in betting odds)]; and

*Second Proposition:* That the defendant did so by [(telephone) (telegraph) (radio) (semaphore) [or similar means]].

[or]

[13] That the defendant knowingly [(installed) (maintained)] equipment for the [(transmission) (receipt)] of information as to [(wagers) (betting odds) (changes in betting odds)].

If you find from your consideration of all the evidence that [(this proposition) (each of these propositions)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this proposition) (any one of these propositions)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/28-1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 28-1 (1991)).

Give Instruction 20.01.

When the charge alleges the use of similar devices or similar means, give all the types of devices or means within the brackets.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**20.03 Definition Of Keeping A Gambling Place**

A person commits the offense of keeping a gambling place when he knowingly permits any real estate, vehicle, boat, or other property [(owned or occupied by him) (under his control)] to be used for the purpose of gambling.

**Committee Note**

720 ILCS 5/28-3 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 28-3 (1991)), as amended by P.A. 86-1029, effective February 7, 1990.

Give Instruction 20.01, defining gambling.

See Chapter 720, Section 28-3 for exclusions to the definition of keeping a gambling place.

Use applicable bracketed material.



**20.04 Issues In Keeping A Gambling Place**

To sustain the charge of keeping a gambling place, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly permitted [(the premises at \_\_\_\_\_) (a \_\_\_\_\_)] to be used for the purposes of gambling; and

*Second Proposition:* That the \_\_\_\_\_ was [(owned or occupied by the defendant) (under the defendant's control)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/28-3 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 28-3 (1991)), as amended by P.A. 86-1089, effective February 7, 1990.

Give Instruction 20.03.

Insert in the blanks a description of the place in question.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**20.05 Definition Of Syndicated Gambling—Policy**

A person commits the offense of syndicated gambling when he knowingly uses any [(premises) (property)] for the purpose of receiving or he knowingly does receive from what is commonly called “policy” any

[1] money from a person other than the bettor or player whose bets or plays are represented by such money.

[or]

[2] written “policy game” records, made or used over a period of time, from a person other than the bettor or player whose bets or plays are represented by such written record.

**Committee Note**

720 ILCS 5/28-1.1(b) and (c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 28-1.1(b) and (c) (1991)).

Give Instruction 20.06.

Give Instruction 20.01C, defining the term “policy game.”

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**20.06 Issues In Syndicated Gambling—Policy**

To sustain the charge of syndicated gambling, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(received) (used the premises at \_\_\_\_\_ for the purpose of receiving)] money from what is commonly known as “policy”; and

*Second Proposition:* That the person from whom defendant received such money was not the bettor or player whose bets or plays were represented by such money.

[or]

*First Proposition:* That the defendant knowingly [(received) (used the premises at \_\_\_\_\_ for the purpose of receiving)] written “policy game” records made or used over a period of time; and

*Second Proposition:* That the person from whom defendant received such written records was not the bettor or player whose bets or plays were represented by such written records.

If you find your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/28-1.1(b) and (c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 28-1.1(b) and (c) (1991)).

Give Instruction 20.05.

Insert in the blanks a description of the place in question.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**20.07 Definition Of Syndicated Gambling—Bookmaking**

A person commits the offense of syndicated gambling when he receives or accepts more than five bets or wagers upon the result of any trials or contests of skill, speed, or power of endurance or upon any lot, chance, casualty, unknown or contingent event whatsoever, when the bets or wagers are of such size that the total amounts of money paid or promises to be paid to such person on account thereof exceeds \$2,000, regardless of the manner or form in which the bets or wagers are recorded.

**Committee Note**

720 ILCS 5/28-1.1(b) and (d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 28-1.1(b) and (d) (1991)).

Note the exclusions in Sections 28-1.1(e)(1), (e)(2), (e)(3), and (e)(4).



**20.08 Issues In Syndicated Gambling—Bookmaking**

To sustain the charge of syndicated gambling, the State must prove the following propositions:

*First Proposition:* That the defendant received or accepted more than five bets or wagers upon the result of \_\_\_\_\_; and

*Second Proposition:* That such bets or wagers were of such size that the total amount of money paid or promised to be paid to defendant exceeded \$2,000.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/28-1.1(b) and (d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 28-1.1(b) and (d) (1991)).

Give Instruction 20.07.

Insert in the blank the type of gambling.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

# Chapter 21.00

## BRIBERY

### SYNOPSIS

- 21.01 Definition Of Offering A Bribe—Athletic Contest
- 21.02 Issues In Offering A Bribe—Athletic Contest
- 21.03 Definition Of Accepting A Bribe—Athletic Contest
- 21.04 Issues In Accepting A Bribe—Athletic Contest
- 21.05 Definition Of Failure To Report Offer Of Bribe—Athletic Contest
- 21.06 Issues In Failure To Report Offer Of Bribe—Athletic Contest
- 21.07 Definition Of Offering A Commercial Bribe
- 21.08 Issues In Offering A Commercial Bribe
- 21.09 Definition Of Accepting A Commercial Bribe
- 21.10 Issues In Accepting A Commercial Bribe
- 21.11 Definition Of Bribery—Official
- 21.12 Issues In Bribery—Official
- 21.12A Issues In Bribery—Belief In Official Status
- 21.12B Issues In Bribery—Official—Through An Intermediary
- 21.12C Issues In Bribery—Official—Agreement By Intermediary
- 21.12D Issues In Bribery—Official—Solicitation By Intermediary
- 21.13 Definition Of Failure To Report A Bribe—Official
- 21.14 Issues In Failure To Report A Bribe—Official
- 21.15 Definition Of Official Misconduct
- 21.16 Issues In Official Misconduct
- 21.16A Enforcement Agency
- 21.17 Definition Of Offering A Bribe—Attendance At A Particular Institution
- 21.18 Issues In Offering A Bribe—Attendance At A Particular Institution
- 21.19 Definition Of Offering A Bribe—Sports Agents
- 21.20 Issues In Offering A Bribe—Sports Agents

**21.01 Definition Of Offering A Bribe—Athletic Contest**

A person commits the offense of offering a bribe when he, with the intent to influence any person [(participating in) (officiating at) (connected with)] any [(professional) (amateur)] [(athletic contest) (sporting event) (sporting exhibition)], [(gives) (offers) (promises)] any [(money) (bribe) (thing of value) (advantage)] to induce that [(participant) (official) (other person)] not to use his best efforts in connection with the [(contest) (event) (exhibition)].

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/29-1(a) (West 2016).

Give Instruction 21.02.

Note that the recipient of the alleged bribe need not be the person participating in, officiating at, or connected with the event at issue. The recipient may be a third person the defendant intended to use to influence the participant, official, or person otherwise connected with the event at issue.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

## 21.02 Issues In Offering A Bribe—Athletic Contest

To sustain the charge of offering a bribe, the State must prove the following propositions:

*First Proposition:* That the defendant [(gave) (offered) (promised)] [(money) (a bribe) (a thing of value) (an advantage)]; and

*Second Proposition:* That the defendant did so with the intent to induce \_\_\_\_\_ not to use his best efforts in connection with [(an athletic contest) (a sporting event) (a sporting exhibition)]; and

*Third Proposition:* That \_\_\_\_\_ was [(participating in) (officiating at) (connected with)] the [(contest) (event) (exhibition)].

If you find from your considerations of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/29-1(a) (West 2016).

Give Instruction 21.01.

Note that the recipient of the alleged bribe need not be the person participating in, officiating at, or connected to the event at issue. The recipient may be a third person the defendant intended to use to influence the participant, official, or person otherwise connected with the event at issue.

Insert in the blanks the name of the participant, official, or person connected with the event at issue.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**21.03 Definition Of Accepting A Bribe—Athletic Contest**

A person [(participating in) (officiating at) (connected with)] any [(professional) (amateur)] [(athletic contest) (sporting event or exhibition)] commits the offense of accepting a bribe when he [(accepts) (agrees to accept)] any [(money) (bribe) (thing of value) (advantage)] with the [(intent) (understanding) (agreement)] that he will not use his best efforts in connection with the [(contest) (event) (exhibition)].

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/29-2 (West 2017).

Give Instruction 21.04.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### 21.04 Issues In Accepting A Bribe—Athletic Contest

To sustain the charge of accepting a bribe, the State must prove the following propositions:

*First Proposition:* That the defendant was [(participating in) (officiating at) (connected with)] [(an athletic contest) (a sporting event or exhibition)]; and

*Second Proposition:* That the defendant [(accepted) (agreed to accept)] [(money) (a bribe) (a thing of value) (an advantage)]; and

*Third Proposition:* That the defendant did so with the [(intent) (understanding) (agreement)] that he would not use his best efforts in connection with the [(contest) (event) (exhibition)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/29-2 (West 2017).

Give Instruction 21.03.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**21.05 Definition Of Failure To Report Offer Of Bribe—Athletic Contest**

A person [(participating in) (officiating at) (connected with)] [(a professional) (an amateur)] [(athletic contest) (sporting event or exhibition)] commits the offense of failure to report the offer of a bribe when he fails to report forthwith to his employer, the promoter of the [(contest) (event) (exhibition)], the local State's Attorney, or a peace officer any offer or promise of a bribe made to him.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/29-3 (West 2017).

Give Instructions 21.01 and 21.06.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**21.06 Issues In Failure To Report Offer Of Bribe—Athletic Contest**

To sustain the charge of failure to report the offer of a bribe, the State must prove the following propositions:

*First Proposition:* That the defendant was [(participating in) (officiating at) (connected with)] [(an athletic contest) (a sporting event or exhibition)]; and

*Second Proposition:* That an offer or promise of a bribe was made to the defendant; and

*Third Proposition:* That the defendant failed to report the offer or promise of a bribe forthwith to his employer, or the promoter of the [(contest) (event) (exhibition)], or the local State's Attorney, or a peace officer.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/29-3 (West 2017).

Give Instruction 21.05.

Give Instruction 4.08 when the definition of the term “peace officer” is an issue.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**21.07 Definition Of Offering A Commercial Bribe**

A person commits the offense of commercial bribery when he [(confers) (offers) (agrees to confer)] any benefit upon any [(employee) (agent) (fiduciary)] without the consent of the [(employer) (principal)] of the [(employee) (agent) (fiduciary)], with intent to influence the conduct of the [(employee) (agent) (fiduciary)], in relation to the affairs of his [(employer) (principal)].

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/29A-1 (West 2017).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

## 21.08 Issues In Offering A Commercial Bribe

To sustain the charge of commercial bribery, the State must prove the following propositions:

*First Proposition:* That the defendant [(conferred) (offered) (agreed to confer)] a benefit upon \_\_\_\_\_, who was a[n] [(employee) (agent) (fiduciary)] of \_\_\_\_\_, a[n] [(employer) (principal)]; and

*Second Proposition:* That the defendant did so without the consent of the [(employer) (principal)]; and

*Third Proposition:* That the defendant did so with the intent to influence the [(employee's) (agent's) (fiduciary's)] conduct in relation to his [(employer's) (principal's)] affairs.

If you find from your considerations of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/29A-1 (West 2017).

Give Instruction 21.07.

Insert in the first blank the name of the person to whom the bribe was offered.

Insert in the second blank the name of the employee or principal.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**21.09 Definition Of Accepting A Commercial Bribe**

A[n] [(employee) (agent) (fiduciary)] commits the offense of receiving a commercial bribe when, without the consent of his [(employer) (principal)], he [(solicits) (accepts) (agrees to accept)] any benefit from another person upon an [(agreement) (understanding)] that such benefit will influence the [(employee's) (agent's) (fiduciary's)] conduct in relation to his [(employer's) (principal's)] affairs.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/29A-2 (West 2017).

Give Instruction 21.10.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

## 21.10 Issues In Accepting A Commercial Bribe

To sustain the charge of receiving a commercial bribe, the State must prove the following propositions:

*First Proposition:* That the defendant was a[n] [(employee) (agent) (fiduciary)] of \_\_\_\_\_, his [(employer) (principal)]; and

*Second Proposition:* That the defendant [(solicited) (accepted) (agreed to accept)] a benefit from another person; and

*Third Proposition:* That the defendant did so upon an [(understanding) (agreement)] that such benefit would influence his conduct in relation to his [(employer's) (principal's)] affairs; and

*Fourth Proposition:* That the defendant did so without the consent of his [(employer) (principal)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

### Committee Note

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/29A-2 (West 2017).

Give Instruction 21.09.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**21.11 Definition Of Bribery—Official**

A person commits the offense of bribery when he

[1] promises or tenders any [(property) (personal advantage)] to a [(public officer) (public employee) (juror) (witness)] with intent to influence the performance of any act related to the [(officer's) (employee's) (juror's) (witness')] employment or function.

[or]

[2] promises or tenders any [(property) (personal advantage)] to one whom he believes to be a [(public officer) (public employee) (juror) (witness)] with intent to influence the performance of any act related to the employment or function of a [(public officer) (public employee) (juror) (witness)].

[or]

[3] promises or tenders any [(property) (personal advantage)] to another person with intent to cause the other person to influence the performance of any act related to the employment or function of a [(public officer) (public employee) (juror) (witness)].

[or]

[4] [(receives) (retains) (agrees to accept)] any [(property) (personal advantage)] knowing that the [(property) (personal advantage)] [(was tendered) (promised)] with intent to cause him to influence the performance of any act related to the employment or function of a [(public officer) (public employee) (juror) (witness)].

[or]

[5] [(solicits) (receives) (retains) (agrees to accept)] any [(property) (personal advantage)] pursuant to an understanding that he shall [(improperly influence) (attempt to influence)] the performance of any act related to the employment or function of a [(public officer) (public employee) (juror) (witness)].

[The term “public officer” means a person who is elected to office pursuant to statute to discharge a public duty for [any political subdivision of] the State.]

[The term “public officer” means a person who is appointed to an office which is established, and the qualifications and duties of which are prescribed by statute, to discharge a public duty for [any political subdivision of] the State.]

[The term “public employee” is a person who is authorized to perform an official function on behalf of, and is paid by [any political subdivision of] the State.]

[The term “tender” means any delivery or proffer made with the requisite intent.]

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/33-1, 2-17, and 2-18 (West 2017), as amended by P.A. 97-1108, effective January 1, 2013.

When paragraph [1] is used, give Instruction 21.12. When paragraph [2] is used,

give Instruction 21.12A. When paragraph [3] is used, give Instruction 21.12B. When paragraph [4] is used, give Instruction 21.12C. When paragraph [5] is used, give Instruction 21.12D.

Section 2-20, defining the word “solicit,” is not applicable to Section 33-1(e).

In most instances, the provision in the statute that the payment or promise be of property or advantage “which he is not authorized by law to accept” presents a question of law rather than fact. If a fact dispute arises on this issue, give a special instruction including this element.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**21.12 Issues In Bribery—Official**

To sustain the charge of bribery, the State must prove the following propositions:

*First Proposition:* That \_\_\_\_\_ was a [(public officer) (public employee) (juror) (witness)]; and

*Second Proposition:* That the defendant promised or tendered to \_\_\_\_\_ [(property) (a personal advantage)]; and

*Third Proposition:* That the defendant did so with the intent to influence the performance of any act related to \_\_\_\_\_'s [(employment) (function)] as a [(public officer) (public employee) (juror) (witness)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/33-1 (West 2017).

Give Instruction 21.11.

Insert in the blanks the name of the person allegedly bribed.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**21.12A Issues In Bribery—Belief In Official Status**

To sustain the charge of bribery, the State must prove the following propositions:

*First Proposition:* That the defendant believed \_\_\_\_\_ to be a [(public officer) (public employee) (juror) (witness)]; and

*Second Proposition:* That the defendant promised or tendered to \_\_\_\_\_ [(property) (a personal advantage)]; and

*Third Proposition:* That the defendant did so with the intent to influence the performance of any act related to the [(employment) (function)] of a [(public officer) (public employee) (juror) (witness)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/33-1 (West 2017).

Give Instruction 21.11.

Insert in the blanks the name of the person allegedly bribed.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**21.12B Issues In Bribery—Official—Through An Intermediary**

To sustain the charge of bribery, the State must prove the following propositions:

*First Proposition:* That the defendant promised or tendered [(property) (a personal advantage)] to \_\_\_\_\_; and

*Second Proposition:* That the defendant did so with the intent to cause \_\_\_\_\_ to influence the performance of any act related to the [(employment) (function)] of a [(public officer) (public employee) (juror) (witness)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/33-1 (West 2017).

Give Instruction 21.11.

Insert in the blanks the name of the intermediary.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**21.12C Issues In Bribery—Official—Agreement By Intermediary**

To sustain the charge of bribery, the State must prove the following propositions:

*First Proposition:* That the defendant [(received) (retained) (agreed to accept)] [(any property) (a personal advantage)] from \_\_\_\_\_; and

*Second Proposition:* That the defendant knew that the [(property) (personal advantage)] was [(tendered) (promised)] by \_\_\_\_\_ with intent to cause the defendant to influence the performance of any act related to the employment or function of a [(public officer) (public employee) (juror) (witness)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/33-1 (West 2017).

Give Instruction 21.11.

Insert in the blanks the name of the person offering the bribe.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**21.12D Issues In Bribery—Official—Solicitation By Intermediary**

To sustain the charge of bribery, the State must prove the following propositions:

*First Proposition:* That the defendant [(solicited) (received) (retained) (agreed to accept)] [(property) (a personal advantage)] from \_\_\_\_\_; and

*Second Proposition:* That the defendant did so pursuant to an understanding with \_\_\_\_\_ that the defendant would [(improperly influence) (attempt to influence)] the performance of an act or function of a [(public officer) (public employee) (juror) (witness)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/33-1 (West 2017).

Give Instruction 21.11.

Insert in the blanks the name of the person solicited.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**21.13 Definition of Failure To Report A Bribe—Official**

A [(public officer) (public employee) (juror)] commits the offense of failure to report a bribe when he fails to report forthwith to the [(local State's Attorney) (Department of Illinois State Police)] any offer of bribery.

[The term “public officer” means a person who is elected to office pursuant to statute to discharge a public duty for [any political subdivision of] the State.]

[The term “public officer” means a person who is appointed to an office which is established, and the qualifications and duties of which are prescribed by statute, to discharge a public duty for [any political subdivision of] the State.]

[The term “public employee” is a person who is authorized to perform an official function on behalf of, and is paid by [any political subdivision of] the State.]

[The term “tender” means any delivery or proffer made with the requisite intent.]

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/33-2, 2-17, and 2-18 (West 2017), as amended by P.A. 97-1108, effective January 1, 2013.

Give the appropriate portion of Instruction 21.11, defining the term “bribery.”

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**21.14 Issues In Failure To Report A Bribe—Official**

To sustain the charge of failure to report a bribe, the State must prove the following propositions:

*First Proposition:* That the defendant was a [(public officer) (public employee) (juror)]; and

*Second Proposition:* That the defendant was offered a bribe to influence the performance of an act related to his [(employment) (function)] as a [(public officer) (public employee) (juror)]; and

*Third Proposition:* That the defendant failed to report forthwith to the [(local State's Attorney) (Department of Illinois State Police)] the offer of the bribe.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/33-2 (West 2017).

Give Instruction 21.13.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**21.15 Definition Of Official Misconduct**

A [(public officer) (public employee) (special government agent)] commits the offense of official misconduct when, in his official capacity, he

[1] [(intentionally) (recklessly)] fails to perform any mandatory duty as required by law.

[or]

[2] knowingly performs an act which he knows he is forbidden by law to perform.

[or]

[3] performs an act in excess of his lawful authority with intent to obtain a personal advantage for [(himself) (another)].

[or]

[4] [(solicits) (knowingly accepts)] a fee or reward which he knows is not authorized by law, for the performance of any act.

**Committee Note**

720 ILCS 5/33-3(a), 2-17, and 2-18 (West 2019), as amended by P.A. 94-0338, effective January 1, 2006.

Give Instruction 21.16.

When the charge involves a public employee, give Instruction 4.11, defining “public employee.”

When the charge involves a public officer, give Instruction 4.12, defining “public officer.”

When the charge involves a special government agent, give Instruction 4.12A, defining “special government agent.”

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**21.16 Issues In Official Misconduct**

To sustain the charge of official misconduct, the State must prove the following propositions:

*First Proposition:* That the defendant was a [(public officer) (public employee) (special government agent)]; and

*Second Proposition:* That when in his official capacity, the defendant [(intentionally) (recklessly)] failed to perform a mandatory duty required by law.

[or]

*Second Proposition:* That when in his official capacity, the defendant knowingly performed an act which he knew he was forbidden by law to perform.

[or]

*Second Proposition:* That when in his official capacity, the defendant performed an act in excess of his lawful authority with intent to obtain a personal advantage for [(himself) (another)].

[or]

*Second Proposition:* That when in his official capacity, the defendant [(solicited) (knowingly accepted)] for the performance of any act, a fee or reward which he knew was not authorized by law.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/33-3(a) (West 2019), as amended by P.A. 94-0338, effective January 1, 2006.

Give Instruction 21.15.

Choose from among the four options for the Second Proposition the option which reflects the charge against the defendant.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**21.16A Enforcement Agency**

To sustain the charge of official misconduct, the State must prove the following propositions:

*First Proposition:* That the defendant was an employee of a law enforcement agency; and

*Second Proposition:* That the defendant knowingly [(used) (communicated)] information acquired in the course of his employment; and

*Third Proposition:* That when the defendant did so, he intended to [(obstruct) (impede) (prevent)] the [(investigation) (apprehension) (prosecution)] of any [(criminal offense) (person)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/33-3(b) (West 2017), as amended by P.A. 98-0867, effective June 1, 2015.

Give Instruction 21.15A.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**21.17 Definition Of Offering A Bribe—Attendance At A Particular Institution**

A person commits the offense of offering a bribe when he [(offers) (promises)] any [(money) (bribe) (thing of value) (advantage)] with the intent to induce any person to [(attend) (refrain from attending) (continue to attend)] a particular institution of [(secondary) (higher)] education for the purpose of [(participating) (not participating)] in interscholastic athletic competition for such institution.

**Committee Note**

*Instruction and Note Approved January 26, 2018*

720 ILCS 5/29-1(b) (West 2017).

Give Instruction 21.18.

Note that the recipient of the alleged offer need not be the student athlete. The recipient may be a third person the defendant used with the intent to influence the student athlete's decision.

Section 5/29-1(b) excludes the following from subsection (b):

“(1) offering or awarding to an individual any type of scholarship, grant or other bona fide financial aid or employment; (2) offering of any type of financial assistance by such individual's family; or (3) offering of any item of de minimis value by such institution's authorities if such item is of the nature of an item that is commonly provided to any or all students or prospective students.”

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

## 21.18 Issues In Offering A Bribe—Attendance At A Particular Institution

To sustain the charge of offering a bribe, the State must prove the following propositions:

*First Proposition:* That the defendant [(offered) (promised)] [(money) (a bribe) (a thing of value) (an advantage)]; and

*Second Proposition:* That the defendant did so with the intent to influence \_\_\_\_\_ to [(attend) (refrain from attending) (continue to attend)] \_\_\_\_\_ for the purpose of [(participating) (not participating)] in interscholastic athletic competition for \_\_\_\_\_; and

*Third Proposition:* That \_\_\_\_\_ was an institution of [(higher) (secondary)] education.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

*Committee Note Approved January 26, 2018*

720 ILCS 5/29-1(b) (West 2017).

Give Instruction 21.17.

Note that the recipient of the alleged offer need not be the student athlete. The recipient may be a third person the defendant used with the intent to influence the student athlete's decision.

Insert in the appropriate blanks the name of the person the defendant was allegedly attempting to influence, and the name of the institution of secondary or higher education. The institution named in the second and third blanks of the Second Proposition must be the same.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

**21.19 Definition Of Offering A Bribe—Sports Agents**

A person commits the offense of offering a bribe when he gives any [(money) (goods) (thing of value)] to an individual enrolled in an institution of higher education who participates in interscholastic competition and [(represents) (attempts to represent)] that individual in future negotiations for employment with any professional sports team.

**Committee Note**

*Committee Note Approved January 26, 2018*

720 ILCS 5/29-1(c) (West 2017).

Give Instruction 21.20.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### 21.20 Issues In Offering A Bribe—Sports Agents

To sustain the charge of offering a bribe, the State must prove the following propositions:

*First Proposition:* That the defendant gave [(money) (goods) (a thing of value)] to \_\_\_\_\_; and

*Second Proposition:* That \_\_\_\_\_ was enrolled at \_\_\_\_\_; and

*Third Proposition:* That \_\_\_\_\_ was an institution of higher education; and

*Fourth Proposition:* That \_\_\_\_\_ participated in interscholastic competition; and

*Fifth Proposition:* That the defendant [(represented) (attempted to represent)] \_\_\_\_\_ in future negotiations for employment with any professional sports team.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

*Committee Note Approved January 26, 2018*

720 ILCS 5/29-1(c) (West 2017).

Give Instruction 21.19.

Insert in the appropriate blanks the name of the student athlete and the name of the institution of higher education.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.





## Chapter 22.00

# INTERFERENCE WITH JUDICIAL AND OTHER GOVERNMENTAL FUNCTIONS

### SYNOPSIS

- 22.01 Definition Of Perjury
- 22.01A Definition Of Material
- 22.01B An Oath Or Affirmation Was Required
- 22.02 Issues In Perjury
- 22.03 Definition Of Perjury—Contradictory Statements
- 22.04 Issues In Perjury—Contradictory Statements
- 22.05 Definition Of Subornation Of Perjury
- 22.06 Issues In Subornation Of Perjury
- 22.07 Definition Of Communicating With A Juror
- 22.08 Issues In Communicating With A Juror
- 22.09 Definition Of Communicating With A Witness (Until January 1, 1995)
- 22.09X Definition Of Communicating With A Witness (As Of January 1, 1995)
- 22.10 Issues In Communicating With A Witness (Until January 1, 1995)
- 22.10X Issues In Communicating With A Witness (As Of January 1, 1995)
- 22.11 Definition Of Harassment Of A Juror Or Witness—Communication Producing Mental Anguish Or Emotional Distress (Until January 1, 1995)
- 22.11X Definition Of Harassment Of A Juror Or Witness—Conveying A Threat (Until January 1, 1995)
- 22.11Y Definition Of Harassment Of A Juror, Witness, Or Family Member Of A Juror Or Witness (As Of January 1, 1995)
- 22.11Z Definition Of Family Member
- 22.11AA Definition Of Harassment Of A Child Representative Or Family Member Of A Child Representative
- 22.11BB Definition Of Representative For The Child
- 22.12 Issues In Harassment Of A Juror Or Witness—Communication Producing Mental Anguish Or Emotional Distress (Until January 1, 1995)
- 22.12X Issues In Harassment Of A Juror Or Witness—Conveying A Threat (Until January 1, 1995)
- 22.12Y Issues In Harassment Of A Juror, Witness, Or Family Member Of A Juror Or

**Witness (As Of January 1, 1995)**

- 22.12AA Issues In Harassment Of A Child Representative Or Family Member Of A Child Representative
- 22.13 Definition Of Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Institution Employee
- 22.13A Definition Of Correctional Institution Employee
- 22.13X Definition Of Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Institution Employee
- 22.14 Issues In Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Institution Employee
- 22.14X Issues In Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Institution Employee Causing Injury
- 22.15 Definition Of Disarming A Peace Officer
- 22.16 Issues In Disarming A Peace Officer
- 22.17 Definition Of Obstructing Service Of Process
- 22.18 Issues In Obstructing Service Of Process
- 22.19 Definition Of Obstructing Justice
- 22.20 Issues In Obstructing Justice
- 22.21 Definition Of Obstructing Justice—Flight Of Witness
- 22.22 Issues In Obstructing Justice—Flight Of Witness
- 22.23 Definition Of Concealing Or Aiding A Fugitive
- 22.24 Issues In Concealing Or Aiding A Fugitive
- 22.25 Definition Of Escape
- 22.26 Issues In Escape—Penal Institution, Work Release Or Department of Human Services
- 22.27 Definition Of Escape—In Custody
- 22.28 Issues In Escape—In Custody
- 22.29 Definition Of Armed Escape—Penal Institution Or Work Release
- 22.30 Issues In Armed Escape—Penal Institution Or Work Release
- 22.31 Definition Of Armed Escape—In Custody
- 22.32 Issues In Armed Escape—In Custody
- 22.33 Definition Of Aiding Escape
- 22.34 Issues In Aiding Escape
- 22.35 Definition Of Aiding Escape While Armed
- 22.36 Issues In Aiding Escape While Armed
- 22.37 Definition Of Aiding Escape—Officer Of A Penal Institution
- 22.38 Issues In Aiding Escape—Officer Of A Penal Institution
- 22.39 Definition Of Refusing To Aid An Officer
- 22.40 Issues In Refusing To Aid An Officer
- 22.41 Definition Of Compounding A Crime

- 22.42 Issues In Compounding A Crime
- 22.43 Definition Of False Personation Of A Judicial Or Governmental Official
- 22.44 Issue In False Personation Of A Judicial Or Governmental Official
- 22.45 Definition Of Performance Of An Unauthorized Act
- 22.46 Issues In Performance Of An Unauthorized Act
- 22.47 Definition Of Simulating Legal Process
- 22.48 Issue In Simulating Legal Process
- 22.49 Definition Of Tampering With Public Records
- 22.50 Issue In Tampering With Public Records
- 22.51 Definition Of Tampering With Public Notice
- 22.52 Issues In Tampering With Public Notice
- 22.53 Definition Of Violation Of Bail Bond
- 22.53A Definition Of Violation Of Bail Bond By Possessing A Firearm
- 22.54 Issues In Violation Of Bail Bond
- 22.54A Issues In Violation Of Bail Bond By Possessing A Firearm
- 22.55 Definition Of Bringing Contraband Into A Penal Institution
- 22.56 Issues In Bringing Contraband Into A Penal Institution
- 22.57 Definition Of Possessing Contraband In A Penal Institution
- 22.58 Issues In Possessing Contraband In A Penal Institution
- 22.59 Affirmative Defense To Possessing Contraband In A Penal Institution—Authorized Possession
- 22.60 Issues In Affirmative Defense To Possessing Contraband In A Penal Institution—Authorized Possession
- 22.61 Affirmative Defense To Bringing Or Possessing Contraband In A Penal Institution—Possession At Arrest
- 22.62 Issues In Affirmative Defense To Bringing Or Possessing Contraband In A Penal Institution—Possession At Arrest
- 22.63 Definition Of Unauthorized Bringing Of Contraband Into A Penal Institution By An Employee
- 22.64 Issues In Unauthorized Bringing Of Contraband Into A Penal Institution By An Employee
- 22.65 Definition Of Unauthorized Possession Of Contraband In A Penal Institution By An Employee
- 22.66 Issues In Unauthorized Possession Of Contraband In A Penal Institution By An Employee
- 22.67 Definition Of Unauthorized Delivery Of Contraband In A Penal Institution By An Employee
- 22.68 Issues In Unauthorized Delivery Of Contraband In A Penal Institution By An Employee
- 22.69 Definition Of Penal Institution
- 22.69A Definition Of Employee Of A Penal Institution



- 22.69B Definition Of Deliver Or Delivery
- 22.69C Definition Of Contraband
- 22.69D Definition Of Alcoholic Liquor
- 22.69E Definition Of Cannabis
- 22.69F Definition Of Controlled Substance
- 22.69G Definition Of Weapon
- 22.69H Definition Of Firearm
- 22.69I Definition Of Firearm Ammunition
- 22.69J Definition Of Explosive
- 22.69K Definition Of Tool To Defeat Security Mechanisms
- 22.69L Definition Of Cutting Tool
- 22.69M Definition Of Attempt—Contraband Into A Penal Institution
- 22.69N Definition Of Conspiracy—Contraband In A Penal Institution
- 22.69P Definition Of Solicitation—Contraband In A Penal Institution
- 22.70 Definition Of False Personation Of A Peace Officer
- 22.71 Issue In False Personation Of A Peace Officer
- 22.72 Definition Of Aggravated False Personation Of A Peace Officer
- 22.73 Issues In Aggravated False Personation Of A Peace Officer
- 22.74 Definition Of Violation Of Bail Bond By Possessing A Firearm
- 22.75 Definition Of Escape-Failure To Comply With A Condition Of Electronic Home Monitoring Detention Program
- 22.76 Issues In Escape-Failure To Comply With A Condition Of Electronic Home Monitoring Detention Program
- 22.77 Definition Of Defrauding A Drug And Alcohol Screening Test
- 22.77A Definition Of A Drug Or Alcohol Screening Test
- 22.77B Inferences In Defrauding A Drug And Alcohol Screening Test
- 22.78 Issues In Defrauding A Drug And Alcohol Screening Test

## 22.01 Definition Of Perjury

A person commits the offense of perjury when he, under [(oath) (affirmation)] knowingly makes a false statement, material to the issue or point in question, in [(a proceeding) (any matter)] where by law such [(oath) (affirmation)] is required, and at the time he makes the statement he does not believe the statement to be true.

### Committee Note

720 ILCS 5/32-2(a) (West 2011) (formerly Ill.Rev.Stat. ch. 38, § 32-2 (1991)).

Give Instruction 22.02.

Give Instruction 22.01A, defining “material.”

Give Instruction 22.01B.

The materiality of the alleged false statement is a question of fact for the jury. *United States v. Gaudin*, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. *People v. Dyer*, 51 Ill. App. 3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. *People v. Davis*, 164 Ill. 2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis*, 164 Ill. 2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* § 13, at 262 (1987).

Knowledge of the falsity of the statement at the time it was made is an essential element of the crime of perjury. *People v. Kang*, 269 Ill. App. 3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing *People v. Taylor*, 6 Ill. App. 3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. *People v. Penn*, 177 Ill. App. 3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

“Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case.” *Acevedo*, 275 Ill. App. 3d at 423 (internal citations omitted).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**22.01A Definition Of Material**

A statement is material when it did influence or could have influenced [(the) (a)] [(trier of fact) (decision maker)] on any issue or point in question. In other words, the test for materiality is whether the statement tends to disprove or prove an issue in the case.

Materiality is, therefore, derived from the relationship between the proposition of the allegedly false statement(s) and the issue(s) in the case.

The materiality of a statement is to be determined at the time the statement was made and with reference to the circumstances existing at the time the statement was made without regard to subsequent events.

[The statement, however, does not have to be made in the presence of [(the) (a)] [(trier of fact) (decision maker)] or anyone else to be material.]

**Committee Note**

735 ILCS 5/32-2 (West 2011) (formerly Ill.Rev.Stat. ch. 38, § 32-2 (1991)).

Give Instruction 22.01B.

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. *People v. Davis*, 164 Ill. 2d 309, 311, 647 N.E.2d 977 (1995).

The materiality of the alleged false statement is a question of fact for the jury. *United States v. Gaudin*, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. *People v. Dyer*, 51 Ill. App. 3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The materiality of the false statement is to be determined at the time the statement was made. *Davis*, 164 Ill. 2d at 316 (J. McMorroff concurring), quoting 70 C.J.S., *Perjury* § 13, at 262. The rationale for this proposition derives from case law which holds that a statement is material when it did influence or could have influenced, the trier of fact. *People v. Acevedo*, 275 Ill. App. 3d 420, 423, 656 N.E.2d 118 (2d Dist. 1995); *People v. Briddle*, 84 Ill. App. 3d 523, 527 (2d Dist. 1980); see also *United States v. Noveck*, 273 U.S. 202, 206, 47 S. Ct. 341, 71 L. Ed. 610 (1927). “The crime of perjury is complete when the oath is taken with the necessary intent, although the false affidavit is never used,” *United States v. McKenna*, 327 F.3d 830, 839 (9th Cir. 2003); *United States v. Stone*, 429 F.2d 138, 140–41 (2d Cir. 1970); 60A Am Jur 2d, *Perjury* § 29.

“Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case.” *Acevedo*, 275 Ill. App. 3d at 423 (internal citations omitted).

“A statement can be neither material nor immaterial in itself, but its materiality must be determined in accordance with its relations to some extraneous matter.” *People v. Toner*, 55 Ill. App. 3d 688, 693, 371 N.E.2d 270 (1st Dist. 1977); *People v. Harris*, 102 Ill. App. 2d 335, 337, 242 N.E.2d 782 (5th Dist. 1968), quoting 70 CJS, *Perjury*, par. 11, p. 466.

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**22.01B An Oath Or Affirmation Was Required**

In the [(proceeding) (matter)] in question, an [(oath) (affirmation)] was required.

**Committee Note**

The issue of whether an oath or affirmation was required is a question of law for the court rather than a question of fact for the jury. *People v. Dyer*, 51 Ill. App. 3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977). Though that portion of *Dyer* which holds that materiality is a question of law is no longer good law, the Committee believes that whether an oath or affirmation was required remains a question of law because this issue is governed by statute. The construction of a statute is a question of law. *People v. Smith*, 236 Ill. 2d 162, 167, 923 N.E.2d 259 (2010).

## 22.02 Issues In Perjury

To sustain the charge of perjury, the State must prove the following propositions:

*First Proposition:* That while under [(oath) (affirmation)], the defendant knowingly made a false statement; and

*Second Proposition:* That the false statement was material to the issue or point in question when the statement was made; and

*Third Proposition:* That the defendant believed at the time he made the statement that the statement was not true.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 5/32-2(a) (West 2011) (formerly Ill.Rev.Stat. ch. 38, § 32-2 (1991)).

Give Instruction 22.01.

Give Instruction 22.01A, defining “material.”

Give Instruction 22.01B.

The materiality of the alleged false statement is a question of fact for the jury. *United States v. Gaudin*, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. *People v. Dyer*, 51 Ill. App. 3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. *People v. Davis*, 164 Ill. 2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis*, 164 Ill.2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* § 13, at 262 (1987).

Knowledge of the falsity of the statement made at the time it was made is an essential element of the crime of perjury. *People v. Kang*, 269 Ill. App. 3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing *People v. Taylor*, 6 Ill. App. 3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. *People v. Penn*, 177 Ill. App. 3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

“Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case.” *Acevedo*, 275 Ill. App. 3d at 423 (internal citations omitted).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### 22.03 Definition Of Perjury—Contradictory Statements

A person commits the offense of perjury when he, under [(oath) (affirmation)], knowingly makes contradictory statements material to the issue or point in question, in [(the same proceeding) (different proceedings)] where by law such [(oath) (affirmation)] is required and at the time he made the statements he did not believe both statements to be true. The State need not establish which statement is false.

#### Committee Note

720 ILCS 5/32-2(b) (West 2011) (formerly Ill.Rev.Stat. ch. 38, § 32-2 (1991)).

Give Instruction 22.04.

Give Instruction 22.01A, defining “material.”

Give Instruction 22.01B.

Section (b) of the perjury statute is merely an alternative method of proving perjury, not a new or different offense. *People v. Penn*, 177 Ill. App. 3d 179, 183, 533 N.E.2d 383 (5th Dist. 1988).

The materiality of the alleged false statement is a question of fact for the jury. *United States v. Gaudin*, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. *People v. Dyer*, 51 Ill. App. 3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. *People v. Davis*, 164 Ill. 2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis*, 164 Ill. 2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* § 13, at 262 (1987).

Knowledge of the falsity of the statement made at the time it was made is an essential element of the crime of perjury. *People v. Kang*, 269 Ill. App. 3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing *People v. Taylor*, 6 Ill. App. 3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. *People v. Penn*, 177 Ill. App. 3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

“Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case.” *Acevedo*, 275 Ill. App. 3d at 423 (internal citations omitted).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**22.04 Issues In Perjury—Contradictory Statements**

To sustain the charge of perjury, the State must prove the following propositions:

*First Proposition:* That while under [(oath) (affirmation)] the defendant knowingly made contradictory statements; and

*Second Proposition:* That the contradictory statements were material to the issue or point in question; and

*Third Proposition:* That at the time the defendant made the statements he did not believe both statements to be true.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-2(a) and (b) (West 2011) (formerly Ill.Rev.Stat. ch. 38, § 32-2(a) and (b) (1991)).

Give Instruction 22.03.

Give Instruction 22.01A, defining “material.”

Give Instruction 22.01B.

Section (b) of the perjury statute is merely an alternative method of proving perjury, not a new or different offense. *People v. Penn*, 177 Ill. App. 3d 179, 183, 533 N.E.2d 383 (5th Dist. 1988).

The materiality of the alleged false statement is a question of fact for the jury. *United States v. Gaudin*, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. *People v. Dyer*, 51 Ill. App. 3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. *People v. Davis*, 164 Ill. 2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis*, 164 Ill. 2d at 316 (J. McMorroff concurring), citing 70 CJS, *Perjury* § 13, at 262 (1987).

Knowledge of the falsity of the statement made at the time it was made is an essential element of the crime of perjury. *People v. Kang*, 269 Ill. App. 3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing *People v. Taylor*, 6 Ill. App. 3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. *People v. Penn*, 177 Ill. App. 3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

“Materiality is derived from the relationship between the proposition of the

allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case.” *Acevedo*, 275 Ill. App. 3d at 423 (internal citations omitted).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**22.05 Definition Of Subornation Of Perjury**

A person commits the offense of subornation of perjury when:

He knowingly [(procures) (induces)] another to make a false statement under [(oath) (affirmation)], material to the issue or point in question, in [(a proceeding) (any other matter)] where by law such [(oath) (affirmation)] is required and that when defendant did so, he did not believe the statement(s) to be true.

[or]

He knowingly [(procures) (induces)] another to make contradictory statements under [(oath) (affirmation)], material to the issue or point in question, in [(a proceeding) (any other matter)] where by law such [(oath) (affirmation)] is required and at the time he [(procures) (induces)] another to make contradictory statements he did not believe both statement(s) to be true. The State need not establish which statement is false.

**Committee Note**

720 ILCS 5/32-3 (West 2011) (formerly Ill.Rev.Stat. ch. 38, § 32-3 (1991)).

Give Instruction 22.06.

Give Instruction 22.01A, defining “material.”

Give Instruction 22.01B.

The first paragraph should be given when the State is alleging subornation by false statement or statements. The second paragraph should be given when the State is alleging subornation by contradictory statements.

Section (b) of the perjury statute is merely an alternative method of proving perjury, not a new or different offense. *People v. Penn*, 177 Ill. App. 3d 179, 183, 533 N.E.2d 383 (5th Dist. 1988).

The materiality of the alleged false statement is a question of fact for the jury. *United States v. Gaudin*, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. *People v. Dyer*, 51 Ill. App. 3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. *People v. Davis*, 164 Ill. 2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis*, 164 Ill. 2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* § 13, at 262 (1987).

Knowledge of the falsity of the statement made at the time it was made is an essential element of the crime of perjury. *People v. Kang*, 269 Ill. App. 3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing *People v. Taylor*, 6 Ill. App. 3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. *People v. Penn*, 177 Ill. App. 3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

“Materiality is derived from the relationship between the proposition of the

allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case.” *Acevedo*, 275 Ill. App. 3d at 423 (internal citations omitted).

Use applicable bracketed materials.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



## 22.06 Issues In Subornation Of Perjury

To sustain the charge of subornation of perjury, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(procured) (induced)] \_\_\_\_\_ to make [(a false statement) (contradictory statements)] under [(oath) (affirmation)]; and

*Second Proposition:* That the [(false statement) (contradictory statements)] [(was) (were)] material to the issue or point in question; and

*Third Proposition:* That at the time the defendant [(procured) (induced)] \_\_\_\_\_ to make a false statement the defendant did not believe the statement(s) to be true.

[or]

*Third Proposition:* That at the time the defendant [(procured) (induced)] \_\_\_\_\_ to make contradictory statements he did not believe both statements to be true.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 5/32-3 (West 2011) (formerly Ill.Rev.Stat. ch 38, § 32-3 (1991)).

Give Instruction 22.05

Give Instruction 22.01A, defining “material.”

Give Instruction 22.01B.

Insert in the blank the name of the person whom the defendant induced to make the allegedly false statement.

The first alternative Third Proposition should be given when the State is alleging subornation by false statement or statements. The second alternative Third Proposition should be given when the State is alleging subornation by contradictory statements.

Section (b) of the perjury statute is merely an alternative method of proving perjury, not a new or different offense. *People v. Penn*, 177 Ill. App. 3d 179, 183, 533 N.E.2d 383 (5th Dist. 1988).

The materiality of the alleged false statement is a question of fact for the jury. *United States v. Gaudin*, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. *People v. Dyer*, 51 Ill. App. 3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. *People v. Davis*, 164 Ill. 2d 309, 311,

647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis*, 164 Ill. 2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* § 13, at 262 (1987).

Knowledge of the falsity of the statement made at the time it was made is an essential element of the crime of perjury. *People v. Kang*, 269 Ill. App. 3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing *People v. Taylor*, 6 Ill. App. 3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. *People v. Penn*, 177 Ill. App. 3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

“Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case.” *Acevedo*, 275 Ill. App. 3d at 423 (internal citations omitted).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

**22.07 Definition Of Communicating With A Juror**

A person commits the offense of communicating with a juror when he communicates directly or indirectly with a person whom he believes has been summoned as a juror, with intent to influence that person regarding any matter which [(is) (may be brought)] before him in his capacity as a juror.

**Committee Note**

720 ILCS 5/32-4(a) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-4(a) (1991)).

Give Instruction 22.08.

Use applicable bracketed material.

**22.08 Issues In Communicating With A Juror**

To sustain the charge of communicating with a juror, the State must prove the following propositions:

*First Proposition:* That the defendant communicated directly or indirectly with \_\_\_\_\_; and

*Second Proposition:* That when he did so, the defendant believed \_\_\_\_\_ had been summoned as a juror; and

*Third Proposition:* That when he did so, the defendant intended to influence \_\_\_\_\_ regarding a matter which [(was) (might have been brought)] before \_\_\_\_\_ in his capacity as a juror.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-4(a) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-4(a) (1991)).

Give Instruction 22.07.

Insert in the blank the name of the juror.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**22.09 Definition Of Communicating With A Witness (Until January 1, 1995)**

A person commits the offense of communicating with a witness when he, with the intent to deter any party or witness from testifying freely, fully, and truthfully to any matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)],

forcibly detains the party or witness.

[or]

communicates directly or indirectly to the party or witness any [(knowingly false information) (threat of injury or damage to the property or person of [(the party or witness) (a relative of the party or witness)])].

[or]

[(offers) (delivers)] money [or other thing of value] to [(the party or witness) (a relative of the party or witness)].

**Committee Note**

720 ILCS 5/32-4(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-4(b) (1991)).

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4(b). As a result, this instruction may be used only in cases in which the alleged communication with a witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.09X.

Give Instruction 22.10.

Use applicable paragraphs and bracketed material.

**22.09X Definition Of Communicating With A Witness (As Of January 1, 1995)**

A person commits the offense of communicating with a witness when he, with the intent to deter any party or witness from testifying freely, fully, and truthfully to any matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)],

[1] forcibly detains the party or witness.

[or]

[2] communicates directly or indirectly to the party or witness any [(knowingly false information) (threat of injury or damage to the property or person of any individual)].

[or]

[3] [(offers) (delivers) (threatens to withhold)] money [or other thing of value] [(to) (from)] any individual.

**Committee Note**

720 ILCS 5/32-4(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-4(b) (1991)), amended by P.A. 88-680, effective January 1, 1995; and P.A. 89-377, effective August 18, 1995.

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4(b). As a result, use this instruction for cases in which the alleged communication with a witness occurred on or after January 1, 1995. For offenses allegedly committed prior to January 1, 1995, use Instruction 22.09.

Give Instruction 22.10X.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 22.10X. Select the alternative that corresponds to the alternative set of propositions selected in the issues instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**22.10 Issues In Communicating With A Witness (Until January 1, 1995)**

To sustain the charge of communicating with a witness, the State must prove the following propositions:

*First Proposition:* That the defendant forcibly detained [(party or witness)]; and

*Second Proposition:* That when the defendant did so, [(party or witness)] was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

*Third Proposition:* That when the defendant did so, he intended to deter [(party or witness)] from testifying freely, fully, and truthfully in the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

*First Proposition:* That the defendant communicated directly or indirectly with [(party or witness)]; and

*Second Proposition:* That when the defendant did so, [(party or witness)] was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

*Third Proposition:* That the defendant communicated knowingly false information to [(party or witness)]; and

*Fourth Proposition:* That when the defendant did so, he intended to deter [(party or witness)] from testifying freely, fully, and truthfully to the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

*First Proposition:* That the defendant communicated directly or indirectly with [(party or witness)]; and

*Second Proposition:* That when the defendant did so, [(party or witness)] was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

*Third Proposition:* That the defendant communicated a threat of injury or damage to the person or property of [(party or witness)]; and

*Fourth Proposition:* That when the defendant did so, he intended to deter [(party or witness)] from testifying freely, fully, and truthfully to the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

*First Proposition:* That the defendant communicated directly or indirectly with [(party or witness)]; and

*Second Proposition:* That when the defendant did so, [(party or witness)] was a party



or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

*Third Proposition:* That the defendant communicated a threat of injury or damage to the person or property of [(relative)]; and

*Fourth Proposition:* That when the defendant did so, [(relative)] was a relative of [(party or witness)]; and

*Fifth Proposition:* That when the defendant did so, he intended to deter [(party or witness)] from testifying freely, fully, and truthfully to the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

*First Proposition:* That the defendant [(offered) (delivered)] money [or other thing of value] to any individual; and

*Second Proposition:* That when he did so, [(party or witness)] was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

*Third Proposition:* That when he did so, the defendant intended to deter [(party or witness)] from testifying freely, fully, and truthfully in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/32-4(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-4(b) (1991)).

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4(b). As a result, this instruction may be used only in cases in which the alleged communication with a witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.10X.

Give Instruction 22.09.

Insert in the appropriate blanks the name of the party or witness and the relative of the party or witness.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**22.10X Issues In Communicating With A Witness (As Of January 1, 1995)**

To sustain the charge of communicating with a witness, the State must prove the following propositions:

[1] *First Proposition:* That the defendant forcibly detained \_\_\_\_\_; and

*Second Proposition:* That when the defendant did so, \_\_\_\_\_ was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

*Third Proposition:* That when the defendant did so, he intended to deter \_\_\_\_\_ from testifying freely, fully, and truthfully in the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

[2] *First Proposition:* That the defendant communicated directly or indirectly with \_\_\_\_\_; and

*Second Proposition:* That when the defendant did so, \_\_\_\_\_ was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

*Third Proposition:* That the defendant communicated [(knowingly false information to \_\_\_\_\_) (a threat of injury or damage to the person or property of any individual)]; and

*Fourth Proposition:* That when the defendant did so, he intended to deter \_\_\_\_\_ from testifying freely, fully, and truthfully to the matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

[or]

[3] *First Proposition:* That the defendant [(offered) (delivered) (threatened to withhold)] money [or other thing of value] [(to) (from)] any individual; and

*Second Proposition:* That when he did so, \_\_\_\_\_ was a party or witness in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)]; and

*Third Proposition:* That when he did so, the defendant intended to deter \_\_\_\_\_ from testifying freely, fully, and truthfully in a matter pending [(in) (before)] [(a court) (a Grand Jury) (an administrative agency) (any State or local governmental unit)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-4(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-4(b) (1991)), amended by P.A. 88-680, effective January 1, 1995; and P.A. 89-377, effective August 18, 1995.

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4(b). As a result, use this instruction for cases in which the alleged communication with a witness occurred on or after January 1, 1995. For offenses allegedly committed prior to January 1, 1995, use Instruction 22.10.

Give Instruction 22.09X.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 22.09X. Select the alternative set of propositions that corresponds to the alternative selected in the definitional instruction.

Insert in the blanks the name of the party or witness.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.11 Definition Of Harassment Of A Juror Or Witness—Communication Producing Mental Anguish Or Emotional Distress (Until January 1, 1995)**

A person commits the offense of harassment of a [(juror) (witness)] when he, with the intent to harass or annoy one who [(has served as a juror, because of the verdict returned by the jury or the participation of the juror in the verdict) (has served as a witness, because of the testimony of the witness) (may be expected to serve as a witness in a pending legal proceeding, because of the potential testimony of the witness)], communicates directly or indirectly with the [(juror) (witness)] in such a manner as to produce mental anguish or emotional distress.

**Committee Note**

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, this instruction may be used only in cases in which the alleged harassment of a juror or witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.11Y.

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994.

Give Instruction 22.12.

Use this instruction when a communication producing mental anguish or emotional distress to a juror or witness is the conduct charged. When conveying a threat to a juror or witness is the conduct charged, use Instruction 22.11X.

For offenses allegedly committed prior to January 1, 1995, use this instruction when a communication producing mental anguish or emotional distress to a juror or witness is the conduct charged. When conveying a threat to a juror or witness is the conduct charged, use Instruction 22.11X.

Use applicable bracketed material.

**22.11X Definition Of Harassment Of A Juror Or Witness—Conveying A Threat (Until January 1, 1995)**

A person commits the offense of harassment of a [(juror) (witness)] when he, with the intent to harass or annoy one who [(has served as a juror, because of the verdict returned by the jury or the participation of the juror in the verdict) (has served as a witness, because of the testimony of the witness) (may be expected to serve as a witness in a pending legal proceeding, because of the potential testimony of the witness)], conveys a threat of injury or damage to the property or person of [any relative of] the [(juror) (witness)].

**Committee Note**

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, this instruction may be used only in cases in which the alleged harassment of a juror or witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.11Y.

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994.

Give Instruction 22.12X.

For offenses allegedly committed prior to January 1, 1995, use this instruction when conveying a threat to a juror or witness is the conduct charged. When a communication producing mental anguish or emotional distress to a juror or witness is the conduct charged, use Instruction 22.11.

Use applicable bracketed material.



**22.11Y Definition Of Harassment Of A Juror, Witness, Or Family Member Of A Juror Or Witness (As Of January 1, 1995)**

A person commits the offense of harassment of a [(juror) (witness) [family member of a (juror) (witness)]] when he, with the intent to harass or annoy [(one) (a family member of one)] who [(has served or is serving as a juror, because of the verdict returned by the jury in a pending legal proceeding or the participation of the juror in the verdict) (has served or is serving as a witness in a pending legal proceeding, because of the testimony of the witness) (may be expected to serve as a witness in a pending legal proceeding, because of the potential testimony of the witness)],

[1] communicates directly or indirectly with the [(juror) (witness) [family member of a (juror) (witness)]] in such a manner as to produce mental anguish or emotional distress.

[or]

[2] conveys a threat of injury or damage to the property or person of such [(juror) (witness) [family member of a (juror) (witness)]]].

**Committee Note**

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994; and P.A. 88-680, effective January 1, 1995; P.A. 89-686, effective June 1, 1997; P.A. 90-126, effective January 1, 1998.

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, use this instruction for all cases in which the alleged harassment of a juror or witness occurred on or after January 1, 1995. For offenses allegedly committed prior to January 1, 1995, see Instructions 22.11 and 22.11X.

P.A. 90-126, effective January 1, 1998, added family members of jurors and witnesses to those covered by the statute.

Give Instruction 22.12Y.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 22.12Y. Select the alternative that corresponds to the alternative selected from the issues instruction.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

**22.11Z Definition Of Family Member**

The term "family member" means a spouse, parent, child, stepchild, or other person related by blood or by present marriage; a person who has, or allegedly has, a child in common; and a person who shares, or allegedly shares, a blood relationship through a child.

**Committee Note**

720 ILCS 5/32-4a(c), added by P.A. 90-126, effective January 1, 1998.

**22.11AA Definition Of Harassment Of A Child Representative Or Family Member Of A Child Representative**

A person commits the offense of harassment of a [(child representative) (family member of a child representative)] when he, with the intent to harass or annoy [(one) (a family member of one)] who [(has served) (is serving)] as a representative for the child, because of the representative service of that capacity,

[1] communicates directly or indirectly with the [(representative) (family member of the representative)] in such manner as to produce mental anguish or emotional distress.

[or]

[2] conveys a threat of injury or damage to the property or person of any [(representative) (family member of a representative)].

**Committee Note**

720 ILCS 32-4a(b), effective June 1, 1997, amended by P.A. 90-126, effective January 1, 1998.

Give Instructions 22.11BB and 22.12AA.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

**22.11BB Definition Of Representative For The Child**

The term “representative for the child” includes a person appointed under Section 506 of the Illinois Marriage and Dissolution of Marriage Act; or appointed under Section 12 of the Uniform Child Custody Jurisdiction Act; or appointed under Section 2-502 of the Code of Civil Procedure.

**Committee Note**

720 ILCS 32-4a(b), effective June 1, 1997, amended by P.A. 90-126, effective January 1, 1998.

Give Instructions 22.11AA and 22.12AA.

Section 506 of the Illinois Marriage and Dissolution Act is found at 750 ILCS 5/506. Section 12 of the Uniform Child Custody Jurisdiction Act is found at 750 ILCS 35/12. Section 2-502 of the Code of Civil Procedure is found at 735 ILCS 5/2-502.



**22.12 Issues In Harassment Of A Juror Or Witness—Communication Producing Mental Anguish Or Emotional Distress (Until January 1, 1995)**

To sustain the charge of harassment of a [(juror) (witness)], the State must prove the following propositions:

*First Proposition:* That the defendant communicated directly or indirectly with \_\_\_\_\_; and

*Second Proposition:* That \_\_\_\_\_ [(served as a juror) (served as a witness) (was expected to serve as a witness in a pending legal proceeding)]; and

*Third Proposition:* That the defendant made the communication with the intent to harass or annoy \_\_\_\_\_ because of the [(verdict returned by the jury or the participation of \_\_\_\_\_ in the verdict) (testimony of \_\_\_\_\_) (potential testimony of \_\_\_\_\_)]; and

*Fourth Proposition:* That the communication produced mental anguish or emotional distress to \_\_\_\_\_.

If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, this instruction may be used only in cases in which the alleged harassment of a juror or witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.12Y.

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994.

Give Instruction 22.11.

Insert in the blanks the name of the witness or juror.

For offenses allegedly committed prior to January 1, 1995, use this instruction when a communication producing mental anguish or emotional distress to a juror or witness is the conduct charged. When conveying a threat to a juror or witness is the conduct charged, use Instruction 22.12X.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

## 22.12X Issues In Harassment Of A Juror Or Witness—Conveying A Threat (Until January 1, 1995)

To sustain the charge of harassment of a [(juror) (witness)], the State must prove the following propositions:

*First Proposition:* That the defendant conveyed a threat of injury or damage to the property or person of [(\_\_\_\_\_) (any relative of \_\_\_\_\_)]; and

*Second Proposition:* That \_\_\_\_\_ [(served as a juror) (served as a witness) (was expected to serve as a witness in a pending legal proceeding)].

*Third Proposition:* That the defendant conveyed the threat with the intent to harass or annoy \_\_\_\_\_ because of the [(verdict returned by the jury or the participation of \_\_\_\_\_ in the verdict) (testimony of \_\_\_\_\_) (potential testimony of \_\_\_\_\_)].

If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, this instruction may be used only in cases in which the alleged harassment of a juror or witness occurred before January 1, 1995. For offenses allegedly committed on or after January 1, 1995, use Instruction 22.12Y.

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994.

Give Instruction 22.11X.

Insert in the blanks the name of the witness or juror.

For offenses allegedly committed prior to January 1, 1995, use this instruction when conveying a threat to a juror or witness is the conduct charged. When a communication producing mental anguish or emotional distress to a juror or witness is the conduct charged, use Instruction 22.12.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

## 22.12Y Issues In Harassment Of A Juror, Witness, Or Family Member Of A Juror Or Witness (As Of January 1, 1995)

To sustain the charge of harassment of a [(juror) (witness) [family member of a (juror) (witness)]], the State must prove the following propositions:

[1] *First Proposition:* That the defendant communicated directly or indirectly with \_\_\_\_\_; and

*Second Proposition:* That \_\_\_\_\_ [was a family member of one who] [(has served as a juror) (has served as a witness) (was expected to serve as a witness in a pending legal proceeding)]; and

*Third Proposition:* That the defendant made the communication with the intent to harass or annoy \_\_\_\_\_ because of the [(verdict returned by the jury or the participation of [(\_\_\_\_\_) (\_\_\_\_\_'s family member)] in the verdict) (testimony of [(\_\_\_\_\_) (\_\_\_\_\_'s family member)])]; and

*Fourth Proposition:* That the communication produced mental anguish or emotional distress to \_\_\_\_\_.

[or]

[2] *First Proposition:* That the defendant conveyed a threat of injury or damage to the property or person of \_\_\_\_\_; and

*Second Proposition:* That \_\_\_\_\_ [was a family member of one who] [(served as a juror) (served as a witness) (was expected to serve as a witness in a pending legal proceeding)]; and

*Third Proposition:* That the defendant conveyed the threat with the intent to harass or annoy \_\_\_\_\_ because of the [(verdict returned by the jury or the participation of [(\_\_\_\_\_) (\_\_\_\_\_'s family member)] in the verdict) (testimony of [(\_\_\_\_\_) (\_\_\_\_\_'s family member)] (potential testimony of \_\_\_\_\_ [(\_\_\_\_\_) (\_\_\_\_\_'s family member)])].

If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 5/32-4a (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-4a (1991)), as amended by P.A. 88-276, effective January 1, 1994; and P.A. 88-680, effective January 1, 1995; P.A. 89-686, effective June 1, 1997; P.A. 90-126, effective January 1, 1998.

P.A. 88-680, effective January 1, 1995, substantively amended Section 32-4a. As a result, use this instruction for all cases in which the alleged harassment of a juror



or witness occurred on or after January 1, 1995. For offenses allegedly committed prior to January 1, 1995, see Instructions 22.12 and 22.12X.

P.A. 90-126, effective January 1, 1998, added family members of jurors and witnesses to those covered by the statute.

Give Instruction 22.11Y.

Insert in the blanks the name of the witness or juror.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 22.11Y. Select the alternative set of propositions that corresponds to the alternative selected from the definitional instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**22.12AA Issues In Harassment Of A Child Representative Or Family Member Of A Child Representative**

To sustain the charge of harassment of a [(child representative) (family member of a child representative)], the State must prove the following propositions:

[1] *First Proposition:* That the defendant communicated directly or indirectly with \_\_\_\_\_; and

*Second Proposition:* That \_\_\_\_\_ [was a family member of one who] [(had served) (was serving)] as a representative for a child;

*Third Proposition:* That the defendant made the communication with the intent to harass or annoy \_\_\_\_\_ because of the representative service of the child representative; and

*Fourth Proposition:* That the communication produced mental anguish or emotional distress to \_\_\_\_\_.

[or]

[2] *First Proposition:* That the individual conveyed a threat of injury or damage to the property or person of any [(child representative) (family member of a child representative)]; and

*Second Proposition:* That \_\_\_\_\_ [(was a family member of one who] served as a child representative; and

*Third Proposition:* That the defendant conveyed the threat with the intent to harass or annoy because of the service rendered as a child representative by [(\_\_\_\_\_) (\_\_\_\_\_'s family member)].

If you find from your consideration of all the evidence that each one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 32-4a(b), effective June 1, 1997, amended by P.A. 90-126, effective January 1, 1998.

Give Instructions 22.11AA and 22.11BB.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

**22.13 Definition Of Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Institution Employee**

A person commits the offense of resisting or obstructing a [(peace officer) (firefighter) (correctional institution employee)] when he knowingly resists or obstructs the performance of any authorized act within the official capacity of one known to him to be a [(peace officer) (firefighter) (correctional institution employee)].

**Committee Note**

*Instruction and Committee Note Approved May 4, 2018*

720 ILCS 5/31-1(a) (West 2018).

Give Instruction 22.14.

Give either Instruction 4.08, defining the term “peace officer,” or Instruction 22.13A, defining the term “correctional institution employee,” as applicable. For this offense, do not give Instruction 4.26.

**22.13A Definition Of Correctional Institution Employee**

The phrase “correctional institution employee” means any person employed to supervise and control inmates incarcerated in a [(penitentiary) (State farm) (reformatory) (prison) (jail) (house of correction) (police detention area) (half-way house) [or other institution or place for the incarceration or custody of persons [(under sentence for offenses) (awaiting trial or sentence for offenses) (under arrest for an offense) (under arrest for a violation of probation) (under arrest for a violation of parole) (under arrest for a violation of mandatory supervised release) (awaiting a bail setting hearing) (awaiting a preliminary hearing)]]].

**Committee Note**

720 ILCS 5/31-1(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 31-1(b) (1991)), added by P.A. 87-1198, effective September 25, 1992.

This definition applies only to violations of Section 5/31-1.

Use applicable bracketed material.

**22.13X Definition of Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Employee**

A person commits the offense of resisting or obstructing a [(peace officer) (firefighter) (correctional institution employee)] causing injury when he knowing resists or obstructs the performance of any authorized act within the official capacity of one know to him to be a [(peace officer) (firefighter) (correctional institution employee)], and his doing so is the proximate cause of an injury to the [(peace officer) (firefighter) (correctional institution employee)].

**Committee Note**

*Instruction and Committee Note Approved May 4, 2018*

720 ILCS 5/31-1(a), (a-7) (West 2018).

Give Instruction 22.14X.

Give Instruction 4.24, defining the term “proximate cause.”

Give either Instruction 4.08, defining the term “peace officer,” or Instruction 22.13A, defining the term “correctional institution employee,” as applicable. For this offense, do not give Instruction 4.26.



**22.14 Issues In Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Institution Employee**

To sustain the charge of resisting or obstructing a [(peace officer) (firefighter) (correctional institution employee)], the State must prove the following propositions:

*First Proposition:* That \_\_\_\_\_ was a [(peace officer) (firefighter) (correctional institution employee)]; and

*Second Proposition:* That the defendant knew \_\_\_\_\_ was a [(peace officer) (firefighter) (correctional institution employee)]; and

*Third Proposition:* That the defendant knowingly resisted or obstructed the performance by \_\_\_\_\_ of an authorized act within his official capacity.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

*Instruction and Committee Note Approved May 4, 2018*

720 ILCS 5/31-1(a) (West 2018).

Give Instruction 22.13.

Insert in the blanks the name of the peace officer, firefighter, or correctional institution employee.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 22.14X Issues In Resisting Or Obstructing A Peace Officer, Firefighter, Or Correctional Institution Employee Causing Injury

To sustain the charge of resisting or obstructing a [(peace officer) (firefighter) (correctional institution employee)] causing injury, the State must prove the following propositions:

*First Proposition:* That \_\_\_\_\_ was a [(peace officer) (firefighter) (correctional institution employee)]; and

*Second Proposition:* That the defendant knew \_\_\_\_\_ was a [(peace officer) (firefighter) (correctional institution employee)]; and

*Third Proposition:* That the defendant knowingly resisted or obstructed the performance by \_\_\_\_\_ of an authorized act within his official capacity; and

*Fourth Proposition:* That when the defendant did so, he proximately caused an injury to \_\_\_\_\_.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

*Instruction and Committee Note Approved May 4, 2018*

Give Instruction 22.13X.

Insert in the blanks the name of the peace officer firefighter correctional institution employee.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.15 Definition Of Disarming A Peace Officer**

A person commits the offense of disarming a peace officer when he knowingly disarms a person known to him to be a peace officer, while the peace officer is engaged in the performance of his official duties, by taking a firearm [(from the person of the peace officer) (from an area within the peace officer's immediate presence)] without the peace officer's consent.

**Committee Note**

720 ILCS 5/31-1a (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-1a (1991)).

Give Instruction 22.16.

Give Instruction 4.08, defining the term "peace officer."

Use applicable bracketed material.

**22.16 Issues In Disarming A Peace Officer**

To sustain the charge of disarming a peace officer, the State must prove the following propositions:

*First Proposition:* That \_\_\_\_\_ was a peace officer; and

*Second Proposition:* That the defendant knew \_\_\_\_\_ was a peace officer; and

*Third Proposition:* That the defendant knowingly took a firearm [(from the person of \_\_\_\_\_) (from an area within \_\_\_\_\_'s immediate presence)] without \_\_\_\_\_'s consent; and

*Fourth Proposition:* That when the defendant did so, \_\_\_\_\_ was engaged in the performance of his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31-1a (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-1a (1991)).

Give Instruction 22.15.

Insert in the blanks the name of the peace officer.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.



**22.17 Definition Of Obstructing Service Of Process**

A person commits the offense of obstructing service of process when he knowingly resists or obstructs the authorized service or execution of any [(civil) (criminal)] process or order of a court.

**Committee Note**

720 ILCS 5/31-3 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-3 (1991)).

Give Instruction 22.18.

Use applicable bracketed material.

**22.18 Issues In Obstructing Service Of Process**

To sustain the charge of obstructing service of process, the State must prove the following proposition:

That the defendant knowingly resisted or obstructed authorized service or execution of any [(civil) (criminal)] process or order of a court.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31-3 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-3 (1991)).

Give Instruction 22.17.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition.

See Instruction 5.03.

**22.19 Definition Of Obstructing Justice**

A person commits the offense of obstructing justice when, with intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of any person, he knowingly

[1] [(destroys) (alters) (conceals) (disguises)] physical evidence.

[or]

[2] [(plants false evidence) (furnishes false information)].

[or]

[3] induces a witness, having knowledge of the subject at issue, to [(leave the State) (conceal himself)].

**Committee Note**

720 ILCS 5/31-4(a) and (b) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-4(a) and (b) (1991)).

Give Instruction 22.20.

The materiality of the witness' knowledge under paragraph [3] is a question of law for the court. *People v. Powell*, 160 Ill. App. 3d 689, 112 Ill. Dec. 553, 513 N.E.2d 1162 (5th Dist. 1987).

Use applicable paragraphs and bracketed material.

## 22.20 Issues In Obstructing Justice

To sustain the charge of obstructing justice, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly [(destroyed) (altered) (concealed) (disguised)] physical evidence; and

*Second Proposition:* That the defendant did so with intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of \_\_\_\_\_.

[or]

*First Proposition:* That the defendant knowingly [(planted false evidence) (furnished false information)]; and

*Second Proposition:* That the defendant did so with intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of \_\_\_\_\_.

[or]

*First Proposition:* That \_\_\_\_\_ (witness) was a witness having knowledge of \_\_\_\_\_ (subject at issue); and

*Second Proposition:* That the defendant induced \_\_\_\_\_ (witness) [(to leave the State) (conceal himself)]; and

*Third Proposition:* That the defendant did so with intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of \_\_\_\_\_.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

720 ILCS 5/31-4(b) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-4(b) (1991)).

Give Instruction 22.19.

Insert in the appropriate blanks the name of the person whose apprehension, prosecution, or defense was obstructed, the name of the witness, or a description of the subject at issue.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**22.21 Definition Of Obstructing Justice—Flight Of Witness**

A person commits the offense of obstructing justice when he has knowledge of the subject at issue and knowingly [(leaves the State) (conceals himself)] with the intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of another person.

**Committee Note**

720 ILCS 5/31-4(c) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-4(c) (1991)).

Give Instruction 22.22.

The materiality of the defendant's knowledge is a question of law for the court. *People v. Powell*, 160 Ill. App. 3d 689, 112 Ill. Dec. 553, 513 N.E.2d 1162 (5th Dist. 1987).

Use applicable bracketed material.

**22.22 Issues In Obstructing Justice—Flight Of Witness**

To sustain the charge of obstructing justice, the State must prove the following propositions:

*First Proposition:* That the defendant had knowledge of \_\_\_\_\_; and

*Second Proposition:* That the defendant knowingly [(left the State) (concealed himself)]; and

*Third Proposition:* That the defendant did so with intent to [(prevent the apprehension) (obstruct the prosecution) (obstruct the defense)] of \_\_\_\_\_.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31-4(c) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-4(c) (1991)).

Give Instruction 22.21.

Insert in the first blank the description of the subject at issue.

Insert in the second blank the name of the person whose apprehension, prosecution, or defense was obstructed.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.23 Definition Of Concealing Or Aiding A Fugitive**

A person who is not the husband, wife, parent, child, brother, or sister of the offender commits the offense of concealing or aiding a fugitive when he [(conceals his knowledge that an offense has been committed) (harbors, aids, or conceals the offender)] with intent to prevent the apprehension of the offender.

**Committee Note**

720 ILCS 5/31-5 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-5 (1991)).

Give Instruction 22.24.

Use applicable bracketed material.

**22.24 Issues In Concealing Or Aiding A Fugitive**

To sustain the charge of concealing or aiding a fugitive, the State must prove the following propositions:

*First Proposition:* That the defendant is not a husband, wife, parent, child, brother, or sister to the offender; and

*Second Proposition:* That \_\_\_\_\_ had committed an offense; and

*Third Proposition:* That the defendant knew that \_\_\_\_\_ had committed an offense; and

*Fourth Proposition:* That the defendant concealed his knowledge that the offense of \_\_\_\_\_ had been committed;

[or]

*Fourth Proposition:* That the defendant [(harbored) (aided) (concealed)] \_\_\_\_\_;  
and

*Fifth Proposition:* That the defendant did so with intent to prevent the apprehension of \_\_\_\_\_.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31-5 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-5 (1991)).

Give Instruction 22.23.

Insert in the appropriate blanks the name of the fugitive and the offense.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**22.25 Definition Of Escape**

A person commits the offense of escape when he is

[1] [(convicted of \_\_\_\_\_) (charged with the commission of \_\_\_\_\_)], and intentionally escapes from [(any penal institution) (the custody of an employee of a penal institution)] [while armed with a dangerous weapon].

[or]

[2] convicted of \_\_\_\_\_ and knowingly fails to [[report (to a penal institution) (for periodic imprisonment at any time)] [(return from [(furlough) (work release) (day release)] [abide by the terms of home confinement]]] [while armed with a dangerous weapon].

[or]

[3] in the custody of the Department of Human Services under [(the provisions of the Sexually Violent Persons Commitment Act) (a detention order) (a commitment order) (a conditional release order) (a court order)] and intentionally escapes from [(any secure residential facility) (a Department of Human Services employee) (an agent of the Department of Human Services)] [while armed with a dangerous weapon].

[or]

[4] in the lawful custody of a peace officer for an alleged [(commission of \_\_\_\_\_) (violation of a term or condition of [(probation) (conditional discharge) (parole) (aftercare release) (mandatory supervised release) (supervision)]] and intentionally escapes from custody [while armed with a dangerous weapon].

**Committee Note**

*Instruction and Committee Note Approved April 29, 2016*

720 ILCS 5/31-6(a), (b), (b-1), (c) and (d) (West 2016).

Give Instruction 22.26.

When applicable, give Instruction 4.08, defining the term “peace officer.”

When applicable, give Instruction 4.09, defining the term “penal institution.”

When applicable, give Instruction 4.17, defining the term “dangerous weapon.”

If there is sufficient evidence for the defense of necessity, give Instructions 24-25.22 and 24-25.22A. *See People v. Unger*, 66 Ill. 2d 333, 5 Ill. Dec. 848, 362 N.E.2d 319 (1977).

Insert in the blank the specific offense. See Committee Notes to Instructions 4.04 and 4.06.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

## 22.26 Issues In Escape—Penal Institution, Work Release Or Department of Human Services

To sustain the charge of escape, the State must prove the following propositions:

*First Proposition:* That the defendant was [(convicted) (charged with the commission)] of \_\_\_\_\_; and

*Second Proposition:* That the defendant intentionally escaped from [(any penal institution) (the custody of an employee of a penal institution)][(. ) (; and)]

[*Third Proposition:* That when the defendant did so, he was armed with a dangerous weapon.]

[or]

*First Proposition:* That the defendant was convicted of \_\_\_\_\_; and

*Second Proposition:* That the defendant knowingly failed to [(report to a penal institution) (report for periodic imprisonment at any time) (return from furlough) (return from work release) (return from day release) (abide by the terms of home confinement)][(. ) (; and)]

[*Third Proposition:* That when the defendant did so, he was armed with a dangerous weapon.]

[or]

*First Proposition:* That the defendant was in the custody of the Department of Human Services under [(the provisions of the Sexually Violent Persons Commitment Act) (a detention order) (a commitment order) (a conditional release order) (a court order)]; and

*Second Proposition:* That the defendant intentionally escaped from [(any secure residential facility) (a Department of Human Services employee) (an agent of the Department of Human Services)][(. ) (; and)]

[*Third Proposition:* That when the defendant did so, he was armed with a dangerous weapon.]

[or]

*First Proposition:* That the defendant was in the lawful custody of a peace officer for an alleged violation of a term or condition of [(probation) (conditional discharge) (parole) (aftercare release) (mandatory supervised release) (supervision)]; and

*Second Proposition:* That the defendant intentionally escaped from custody[(.) (; and)]

[*Third Proposition:* That when the defendant did so, he was armed with a dangerous weapon.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these

propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

#### *Instruction and Committee Note Approved April 29, 2016*

720 ILCS 5/31-6(a), (b), (b-1) and (c) (West 2016), amended by P.A. 95-839, effective August 15, 2008; Amended by P. 95-921, effective January 1, 2009; Amended by P.A. 96-328, effective August 11, 2009; Amended by P.A. 98-558, effective January 1, 2014; Amended by P.A. 98-770, effective January 1, 2015.

Give Instruction 22.25.

When applicable, insert in the blank the specific offense. See Committee Notes to Instructions 4.04 and 4.06.

Whether the defendant was armed with a dangerous weapon is a question for the jury when the character of the weapon is doubtful and the question depends upon the manner of its use. In such cases, the term “dangerous weapon” should be defined in accordance with Instruction 4.17. *See People v. Skelton*, 83 Ill. 2d 58, 414 N.E.2d 455 (1980). If the trial court has determined as a matter of law that the object, such as a gun, is an inherently dangerous weapon, the term “dangerous weapon” need not be defined. *See People v. Estes*, 37 Ill. App. 3d 889, 346 N.E.2d 469 (4th Dist. 1976). *See also People v. Ford*, 34 Ill. App. 3d 79, 339 N.E.2d 293 (1st Dist. 1975).

The Third Proposition should only be given when the defendant is charged with being armed with a dangerous weapon.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

The bracketed paragraphs are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**22.27 Definition Of Escape—In Custody**

A person in the lawful custody of a peace officer for the alleged commission of \_\_\_\_\_ commits the offense of escape when he intentionally escapes from custody.

**Committee Note**

720 ILCS 5/31-6(c) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-6(c) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.28.

Give Instruction 4.08, defining the term “peace officer.”

If there is sufficient evidence for the defense of necessity, give Instructions 24-25.22 and 24-25.22A. *See* People v. Unger, 66 Ill. 2d 333, 5 Ill. Dec. 848, 362 N.E.2d 319 (1977).

Insert in the blank the specific offense.



**22.28 Issues In Escape—In Custody**

To sustain the charge of escape, the State must prove the following propositions:

*First Proposition:* That the defendant was in the lawful custody of a peace officer; and

*Second Proposition:* That the defendant was in custody for the alleged commission of \_\_\_\_\_, and

*Third Proposition:* That the defendant intentionally escaped from custody.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILC S 5/31-6(c) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-6(c) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.27.

Insert in the blank the specific offense.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.29 Definition Of Armed Escape—Penal Institution Or Work Release**

A person [(convicted) (charged with the commission)] of \_\_\_\_\_, commits the offense of armed escape when he, while armed with a dangerous weapon,

[1] intentionally escapes from [(any penal institution) (the custody of an employee of a penal institution)].

[or]

[2] knowingly fails to report [(to a penal institution) (for periodic imprisonment at any time)].

[or]

[3] knowingly fails to return from [(furlough) (work release) (day release)].

**Committee Note**

720 ILCS 5/31-6(d) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-6(d) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.30.

Give Instruction 4.09, defining the term “penal institution.”

If there is sufficient evidence for the defense of necessity, give Instructions 24-25.22 and 24-25.22A. *See* People v. Unger, 66 Ill. 2d 333, 5 Ill. Dec. 848, 362 N.E.2d 319 (1977).

Insert in the blank the specific offense.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

**22.30 Issues In Armed Escape—Penal Institution Or Work Release**

To sustain the charge of armed escape, the State must prove the following propositions:

*First Proposition:* That the defendant was [(convicted) (charged with the commission)] of \_\_\_\_\_; and

*Second Proposition:* That the defendant intentionally escaped from [(any penal institution) (the custody of an employee of a penal institution)];

[or]

*Second Proposition:* That the defendant knowingly failed to report [(to a penal institution) (for periodic imprisonment at any time)];

[or]

*Second Proposition:* That the defendant knowingly failed to return from [(furlough) (work release) (day release)];

and

*Third Proposition:* That when the defendant did so, he was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31-6(d) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-6(d) (1991)).

Give Instruction 22.29.

Insert in the blank the specific offense.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 22.31 Definition Of Armed Escape—In Custody

A person in the lawful custody of a peace officer for the alleged commission of commits the offense of armed escape when he intentionally escapes from custody while armed with a dangerous weapon.

#### Committee Note

720 ILCS 5/31-6(d) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-6(d) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.32.

Give Instruction 4.08, defining the term “peace officer.”

Whether the defendant was armed with a dangerous weapon is a question for the jury when the character of the weapon is doubtful and the question depends upon the manner of its use. In such cases the term “dangerous weapon” should be defined in accordance with Instruction 4.17. *See People v. Skelton*, 83 Ill. 2d 58, 46 Ill. Dec. 571, 414 N.E.2d 455 (1980). If the trial court has determined as a matter of law that the object, such as a gun, is an inherently dangerous weapon, the term “dangerous weapon” need not be defined. *See People v. Estes*, 37 Ill. App. 3d 889, 346 N.E.2d 469 (4th Dist. 1976). *See also People v. Ford*, 34 Ill. App. 3d 79, 339 N.E.2d 293 (1st Dist. 1975).

Insert in the blank the specific offense.



**22.32 Issues In Armed Escape—In Custody**

To sustain the charge of armed escape, the State must prove the following propositions:

*First Proposition:* That the defendant was in the lawful custody of a peace officer; and

*Second Proposition:* That the defendant was in custody for the alleged commission of \_\_\_\_\_; and

*Third Proposition:* That the defendant intentionally escaped from custody; and

*Fourth Proposition:* That when the defendant did so, he was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31-6(d) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-6(d) (1991)).

Give Instruction 22.31.

Insert in the blank the specific offense.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.33 Definition Of Aiding Escape**

A person commits the offense of aiding escape when he

[1] with intent to aid a prisoner in escaping from a penal institution, [(conveys into the institution) (transfers to the prisoner)] anything for use in escaping.

[or]

[2] knowingly aids a person [(convicted) (charged with the commission)] of \_\_\_\_\_ in escaping from [the custody of an employee of] a penal institution.

[or]

[3] knowingly aids a person [(convicted) (charged with the commission)] of \_\_\_\_\_ in failing to return from [(furlough) (work release) (day release)].

[or]

[4] knowingly aids a person in escaping from [the custody of an employee of] a public institution other than a penal institution, in which he is lawfully detained.

[or]

[5] knowingly aids the escape of a person in the lawful custody of a peace officer for the alleged commission of \_\_\_\_\_.

**Committee Note**

720 ILCS 5/31-7 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-7 (1991)), as amended by P.A. 83-248, effective January 1, 1984, and P.A. 86-335, effective January 1, 1990.

Give Instruction 22.34.

Insert in the blank the specific offense.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

**22.34 Issues In Aiding Escape**

To sustain the charge of aiding escape, the State must prove the following propositions:

*First Proposition:* That \_\_\_\_\_ was a prisoner in a penal institution; and

*Second Proposition:* That the defendant [(conveyed into the penal institution) (transferred to \_\_\_\_\_)] anything for use in escaping; and

*Third Proposition:* That the defendant did so with intent to aid \_\_\_\_\_ in escaping from the penal institution.

[or]

*First Proposition:* That \_\_\_\_\_ was [(convicted) (charged with the commission)] of \_\_\_\_\_; and

*Second Proposition:* That \_\_\_\_\_ was [(confined in) (in the custody of an employee of)] a penal institution; and

*Third Proposition:* That the defendant knowingly aided \_\_\_\_\_ in escaping from the [(confinement) (custody)].

[or]

*First Proposition:* That \_\_\_\_\_ was [(convicted) (charged with the commission)] of \_\_\_\_\_; and

*Second Proposition:* That \_\_\_\_\_ failed to return from [(furlough) (work release) (day release)]; and

*Third Proposition:* That the defendant knowingly aided \_\_\_\_\_ in failing to return from [(furlough) (work release) (day release)].

[or]

*First Proposition:* That \_\_\_\_\_ was lawfully detained in [the custody of an employee of] a public institution other than a penal institution; and

*Second Proposition:* That the defendant knowingly aided \_\_\_\_\_ in escaping from the detention.

[or]

*First Proposition:* That \_\_\_\_\_ was in the lawful custody of a peace officer for the alleged commission of \_\_\_\_\_; and

*Second Proposition:* That the defendant knowingly aided \_\_\_\_\_ in escaping from the custody.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31-7 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-7 (1991)), as amended by P.A. 83-248, effective January 1, 1984, and P.A. 86-335, effective January 1, 1990.

Give Instruction 22.33.

Give Instruction 4.08, defining the term “peace officer.”

Insert in the appropriate blanks the name of the person confined or detained, and the specific offense.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**22.35 Definition Of Aiding Escape While Armed**

A person commits the offense of aiding escape while armed when he, while armed with a dangerous weapon,

[1] with intent to aid a prisoner in escaping from a penal institution, [(conveys into the institution) (transfers to the prisoner)] anything for use in escaping.

[or]

[2] knowingly aids a person [(convicted) (charged with the commission)] of \_\_\_\_\_ in escaping from [the custody of an employee of] a penal institution.

[or]

[3] knowingly aids a person [(convicted) (charged with the commission)] of \_\_\_\_\_ in failing to return from [(furlough) (work release) (day release)].

[or]

[4] knowingly aids a person in escaping from [the custody of an employee of] a public institution, other than a penal institution, in which he is lawfully detained.

[or]

[5] knowingly aids the escape of a person in lawful custody of a peace officer for the alleged commission of \_\_\_\_\_.

**Committee Note**

720 ILCS 5/31-7(g) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-7(g) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.36.

Insert in the blank the specific offense.

Whether the defendant was armed with a dangerous weapon is a question for the jury when the character of the weapon is doubtful and the question depends upon the manner of its use. In such cases the term “dangerous weapon” should be defined in accordance with Instruction 4.17. *See People v. Skelton*, 83 Ill. 2d 58, 46 Ill. Dec. 571, 414 N.E.2d 455 (1980). If the trial court has determined as a matter of law that the object, such as a gun, is an inherently dangerous weapon, the term “dangerous weapon” need not be defined. *See People v. Estes*, 37 Ill. App. 3d 889, 346 N.E.2d 469 (4th Dist. 1976). *See also People v. Ford*, 34 Ill. App. 3d 79, 339 N.E.2d 293 (1st Dist. 1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**22.36 Issues In Aiding Escape While Armed**

To sustain the charge of aiding escape while armed, the State must prove the following propositions:

*First Proposition:* That \_\_\_\_\_ was a prisoner in a penal institution; and

*Second Proposition:* That defendant [(conveyed into the institution) (transferred to \_\_\_\_\_)] anything for use in escaping; and

*Third Proposition:* That the defendant did so with intent to aid \_\_\_\_\_ in escaping from the penal institution; and

*Fourth Proposition:* That when he did so, the defendant was armed with a dangerous weapon.

[or]

*First Proposition:* That \_\_\_\_\_ was [(convicted) (charged with the commission)] of \_\_\_\_\_; and

*Second Proposition:* That \_\_\_\_\_ was [(confined in) (in the custody of an employee of)] a penal institution; and

*Third Proposition:* That the defendant knowingly aided \_\_\_\_\_ in escaping from the [(confinement) (custody)]; and

*Fourth Proposition:* That when he did so, the defendant was armed with a dangerous weapon.

[or]

*First Proposition:* That \_\_\_\_\_ was [(convicted) (charged with the commission)] of \_\_\_\_\_; and

*Second Proposition:* That \_\_\_\_\_ failed to return from [(furlough) (work release) (day release)]; and

*Third Proposition:* That the defendant knowingly aided \_\_\_\_\_ in failing to return from [(furlough) (work release) (day release)]; and

*Fourth Proposition:* That when he did so, the defendant was armed with a dangerous weapon.

[or]

*First Proposition:* That \_\_\_\_\_ was lawfully detained in [the custody of an employee of] a public institution other than a penal institution; and

*Second Proposition:* That the defendant knowingly aided \_\_\_\_\_ in escaping from the detention; and

*Third Proposition:* That when he did so, the defendant was armed with a dangerous weapon.

[or]

*First Proposition:* That \_\_\_\_\_ was in the lawful custody of a peace officer for the alleged commission of \_\_\_\_\_; and

*Second Proposition:* That the defendant knowingly aided \_\_\_\_\_ in escaping from the custody; and

*Third Proposition:* That when he did so, the defendant was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

720 ILCS 5/31-7(g) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-7(g) (1991)), as amended by P.A. 86-335, effective January 1, 1990.

Give Instruction 22.35.

Give Instruction 4.08, defining the term “peace officer.”

Insert in the appropriate blank the name of the person confined or detained, and the specific offense.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.37 Definition Of Aiding Escape—Officer Of A Penal Institution**

An [(officer) (employee)] of a penal institution commits the offense of aiding escape when he recklessly permits a prisoner in his custody to escape.

**Committee Note**

720 ILCS 5/31-7(f) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-7(f) (1991)).

Give Instruction 22.38.

Give Instruction 4.09, defining the term “penal institution.”

Give Instruction 5.01, defining the word “recklessness.”

Use applicable bracketed material.



**22.38 Issues In Aiding Escape—Officer Of A Penal Institution**

To sustain the charge of aiding escape, the State must prove the following propositions:

*First Proposition:* That the defendant was an [(officer) (employee)] of a penal institution; and

*Second Proposition:* That \_\_\_\_\_ was a prisoner in the custody of the defendant; and

*Third Proposition:* That the defendant recklessly permitted \_\_\_\_\_ to escape.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31-7(f) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-7(f) (1991)).

Give Instruction 22.37.

Insert in the blanks the name of the prisoner.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.39 Definition Of Refusing To Aid An Officer**

A person commits the offense of refusing to aid an officer when, upon command, he [(refuses) (knowingly fails)] to reasonably aid a person known to him to be a peace officer in [(apprehending a person whom the officer is authorized to apprehend) (preventing the commission by another of any offense)].

**Committee Note**

720 ILCS 5/31-8 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-8 (1991)).

Give Instruction 22.40.

Use applicable bracketed material.

**22.40 Issues In Refusing To Aid An Officer**

To sustain the charge of refusing to aid an officer, the State must prove the following propositions:

*First Proposition:* That \_\_\_\_\_ was a peace officer; and

*Second Proposition:* That the defendant knew that \_\_\_\_\_ was a peace officer; and

*Third Proposition:* That \_\_\_\_\_ commanded the defendant to aid \_\_\_\_\_ in [(apprehending a person whom \_\_\_\_\_ was authorized to apprehend) (preventing the commission of an offense by another person)]; and

*Fourth Proposition:* That the defendant [(refused) (knowingly failed)] to reasonably aid \_\_\_\_\_.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31-8 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31-8 (1991)).

Give Instruction 22.39.

Insert in the blanks the name of the officer.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.41 Definition Of Compounding A Crime**

A person commits the offense of compounding a crime when he [(receives) (offers to another)] any consideration for a promise not to [(prosecute) (aid in the prosecution of)] an offender.

**Committee Note**

720 ILCS 5/32-1 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-1 (1991)).

Give Instruction 22.42.

Use applicable bracketed material.



**22.42 Issues In Compounding A Crime**

To sustain the charge of compounding a crime, the State must prove the following propositions:

*First Proposition:* That the defendant [(received) (offered to \_\_\_\_\_)] a consideration; and

*Second Proposition:* That the defendant did so in exchange for [(his) (\_\_\_\_\_ 's)] promise not to [(prosecute) (aid in the prosecution of)] \_\_\_\_\_.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-1 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-1 (1991)).

Give Instruction 22.41.

Insert in the blanks the appropriate names

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.43 Definition Of False Personation Of A Judicial Or Governmental Official**

A person commits the offense of false personation of a [(judicial) (governmental)] official when he falsely represents himself to be [(an attorney authorized to practice law) (a public officer) (a public employee)].

**Committee Note**

720 ILCS 5/32-5 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-5 (1991)).

Give Instruction 22.44.

Use applicable bracketed material.

**22.44 Issue In False Personation Of A Judicial Or Governmental Official**

To sustain the charge of personation of a [(judicial) (governmental)] official, the State must prove the following proposition:

That the defendant falsely represented himself to be [(an attorney authorized to practice law) (a public officer) (a public employee)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-5 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-5 (1991)).

Give Instruction 22.43.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.45 Definition Of Performance Of An Unauthorized Act**

A person commits the offense of performance of an unauthorized act when he [(conducts a marriage ceremony) (acknowledges the execution of a document which by law may be recorded) (becomes a surety for a party in a [(civil) (criminal)] proceeding before a [(court) (public officer authorized to accept such surety))]] when he knows that he is not authorized by law to do so.

**Committee Note**

720 ILCS 5/32-6 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-6 (1991)).

Give Instruction 22.46.

Use applicable bracketed material.



**22.46 Issues In Performance Of An Unauthorized Act**

To sustain the charge of performance of an unauthorized act, the State must prove the following propositions:

*First Proposition:* That the defendant [(conducted a marriage ceremony) (acknowledged execution of a document which by law may be recorded) (became a surety for a party in a [(civil) (criminal)] proceeding before a [(court) (public officer authorized to accept such surety)]]; and

*Second Proposition:* That when the defendant did so, he knew that he was not authorized by law to do so.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-6 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-6 (1991)).

Give Instruction 22.45.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.47 Definition Of Simulating Legal Process**

A person commits the offense of simulating legal process when he [(issues) (delivers)] a document which he knows falsely purports to be or simulates any [(civil) (criminal)] process.

**Committee Note**

720 ILCS 5/32-7 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-7 (1991)).

Give Instruction 22.48.

Use applicable bracketed material.

**22.48 Issue In Simulating Legal Process**

To sustain the charge of simulating legal process, the State must prove the following proposition:

That the defendant [(issued) (delivered)] a document which he knew falsely purported to be or simulated a [(civil) (criminal)] process.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-7 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-7 (1991)).

Give Instruction 22.47.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.49 Definition Of Tampering With Public Records**

A person commits the offense of tampering with public records when he knowingly and without lawful authority [(alters) (destroys) (defaces) (removes) (conceals)] a public record

**Committee Note**

720 ILCS 5/32-8 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-8 (1991)).

Give Instruction 22.50.

Use applicable bracketed material.



**22.50 Issue In Tampering With Public Records**

To sustain the charge of tampering with public records, the State must prove the following proposition:

That the defendant knowingly and without lawful authority [(altered) (destroyed) (defaced) (removed) (concealed)] a public record.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-8 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-8 (1991)).

Give Instruction 22.49.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.51 Definition Of Tampering With Public Notice**

A person commits the offense of tampering with a public notice when he knowingly and without lawful authority [(alters) (destroys) (defaces) (removes) (conceals)] a public notice, posted according to law, during the time for which the notice was to remain posted.

**Committee Note**

720 ILCS 5/32-9 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-9 (1991)).

Give Instruction 22.52.

Use applicable bracketed material.

**22.52 Issues In Tampering With Public Notice**

To sustain the charge of tampering with a public notice, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly and without lawful authority [(altered) (destroyed) (defaced) (removed) (concealed)] a public notice; and

*Second Proposition:* That the notice had been posted according to law; and

*Third Proposition:* That the defendant did so during the time for which the notice was to remain posted.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-9 (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 32-9 (1991)).

Give Instruction 22.51.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.53 Definition Of Violation Of Bail Bond**

A person commits the offense of violation of bail bond when he has been admitted to bail for appearance before a court in this State, and incurs a forfeiture of the bail, and knowingly fails to surrender himself within 30 days following the forfeiture of the bail.

**Committee Note**

720 ILCS 5/32-10 (West 2019).

Give Instruction 22.54.

The purpose for which bail is posted controls the degree of the offense.



**22.53A Definition Of Violation Of Bail Bond By Possessing A Firearm**

A person commits the offense of violation of bail bond by possessing a firearm when he has been admitted to bail and when he knowingly violates a condition of his bail bond that he not possess a firearm by knowingly possessing a firearm.

**Committee Note**

720 ILCS 5/32-10(a-5) (West 2019), added by P.A. 88-680, effective January 1, 1995; amended by P.A. 97-1108, effective January 1, 2013.

Give Instruction 22.54A.

**22.54 Issues In Violation Of Bail Bond**

To sustain the charge of violation of bail bond, the State must prove the following propositions:

*First Proposition:* That the defendant had been admitted to bail for appearance before a court in this State; and

*Second Proposition:* That the bail was forfeited; and

*Third Proposition:* That the defendant knowingly failed to surrender himself within 30 days following the forfeiture of the bail.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-10 (West 2019).

Give Instruction 22.53.

The State need not prove notice of forfeiture was sent to the defendant's last known address. *People v. Ratliff*, 65 Ill. 2d 314, 357 N.E.2d 1172 (1976).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

**22.54A Issues In Violation Of Bail Bond By Possessing A Firearm**

To sustain the charge of violation of bail bond by possessing a firearm, the State must prove the following propositions:

*First Proposition:* That the defendant had been admitted to bail;

*Second Proposition:* That the defendant knew a condition of his bail was that he not possess a firearm; and

*Third Proposition:* That the defendant violated this condition by knowingly possessing a firearm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-10(a-5) (West 2019), added by P.A. 88-680, effective January 1, 1995; amended by P.A. 97-1108, effective January 1, 2013.

Give Instruction 22.53A.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.55 Definition Of Bringing Contraband Into A Penal Institution**

A person commits the offense of bringing contraband into a penal institution when he, knowingly and without authority of any person [(designated) (authorized)] to grant such authority,

[1] brings an item of contraband into a penal institution.

[or]

[2] causes another to bring an item of contraband into a penal institution.

[or]

[3] places an item of contraband in such proximity to a penal institution as to give an inmate access to the contraband.

**Committee Note**

720 ILCS 5/31A-1.1(a) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.1(a) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

Give Instruction 22.56.

Give Instruction 22.69C, defining the word “contraband,” and Instruction 22.69, defining the term “penal institution.” Do not use Instruction 4.09, which defines the term “penal institution” for other offenses.

Give applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**22.56 Issues In Bringing Contraband Into A Penal Institution**

To sustain the charge of bringing contraband into a penal institution, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly brought an item of contraband into a penal institution;

[or]

*First Proposition:* That the defendant knowingly caused another to bring an item of contraband into a penal institution;

[or]

*First Proposition:* That the defendant knowingly placed an item of contraband in such proximity to a penal institution as to give an inmate access to the contraband;

and

*Second Proposition:* That the defendant did so without authority from the person[s] [(designated) (authorized)] to grant such authority.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31A-1.1(a) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.1(a) (1991)).

Give Instruction 22.55.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.57 Definition Of Possessing Contraband In A Penal Institution**

A person commits the offense of possessing contraband in a penal institution when he knowingly possesses contraband in a penal institution, regardless of the intent with which he possesses it.

**Committee Note**

720 ILCS 5/31A-1.1(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 31A-1(b) (1991)).

Give Instruction 22.58.

In *People v. Farmer*, 165 Ill. 2d 194, 207, 209 Ill. Dec. 33, 39, 650 N.E.2d 1006, 1012 (1995), the supreme court held that knowledge is the appropriate mental state required by Section 31A-1.1(b).

**22.58 Issues In Possessing Contraband In A Penal Institution**

To sustain the charge of possessing contraband in a penal institution, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed contraband, regardless of the intent with which he possessed it; and

*Second Proposition:* That when the defendant did so, he was in a penal institution.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31A-1.1(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 31A-1(b) (1991)).

Give Instruction 22.57.

In *People v. Farmer*, 165 Ill. 2d 194, 207, 209 Ill. Dec. 33, 39, 650 N.E.2d 1006, 1012 (1995), the supreme court held that knowledge is the appropriate mental state required by Section 31A-1.1(b).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.59 Affirmative Defense To Possessing Contraband In A Penal Institution—Authorized Possession**

It is a defense to the charge of possessing contraband in a penal institution that such possession was specifically authorized by [an order issued pursuant to] a [(rule) (regulation) (directive)] of the governing authority of the penal institution.

**Committee Note**

720 ILCS 5/31A-1.1(k) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.1(k) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

Give Instruction 22.60.

Give Instruction 22.69C, defining the word “contraband,” and Instruction 22.69, defining the term “penal institution.” Do not give Instruction 4.09, which defines the term “penal institution” for other offenses.

Give this instruction when the issue is raised by the evidence. Modify the issues instruction in accordance with the Introduction to Chapter 24–25.00.

This defense is not available to a defendant charged with the offense of Bringing Contraband into a Penal Institution, Chapter 720, Section 31A-1.1(a).

Use applicable bracketed material.



**22.60 Issues In Affirmative Defense To Possessing Contraband In A Penal Institution—Authorized Possession**

\_\_\_\_\_ *Proposition:* That at the time the defendant possessed contraband in a penal institution, such possession was not specifically authorized by [an order issued pursuant to] a [(rule) (regulation) (directive)] of the governing authority of the penal institution.

**Committee Note**

720 ILCS 5/31A-1.1(k) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.1(k) (1991)).

Give Instruction 22.59.

Insert in the blank the number of the proposition.

Use applicable bracketed material.

**22.61 Affirmative Defense To Bringing Or Possessing Contraband In A Penal Institution—Possession At Arrest**

It shall be a defense to the charge of [(bringing) (possessing)] contraband in a penal institution that the person [(bringing contraband into) (possessing contraband in)] a penal institution had been arrested, and that person possessed such contraband at the time of his arrest, and that such contraband was [(brought into) (possessed in)] the institution by that person as a direct and immediate result of his arrest.

**Committee Note**

720 ILCS 5/31A-1.1(l) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.1(l) (1991)), added by P.A. 86-1003, effective January 1, 1990.

Give Instruction 22.62.

Give Instruction 22.69C, defining the word “contraband,” and Instruction 22.69, defining the term “penal institution.” Do not give Instruction 4.09, which defines the term “penal institution” for other offenses.

Give this instruction when the issue is raised by the evidence. Modify the issues instruction in accordance with the Introduction to Chapter 24–25.00.

Use applicable bracketed material.

**22.62 Issues In Affirmative Defense To Bringing Or Possessing Contraband In A Penal Institution—Possession At Arrest**

\_\_\_\_\_ *Proposition:* That at the time the defendant [(brought contraband into) (possessed contraband in)] a penal institution,

[1] he had not been arrested.

[or]

[2] he was not in possession of the contraband at the time of his arrest.

[or]

[3] the contraband was not [(brought into) (possessed in)] the penal institution as a direct and immediate result of defendant's arrest.

**Committee Note**

720 ILCS 5/31A-1.1(l) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.1(l) (1991)).

Give Instruction 22.61.

Insert in the blank the number of the proposition.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### 22.63 Definition Of Unauthorized Bringing Of Contraband Into A Penal Institution By An Employee

A person commits the offense of unauthorized bringing of contraband into a penal institution by an employee when he, being an employee of a penal institution, knowingly and without authority of any person [(designated) (authorized)] to grant such authority

[1] [(brings) (attempts to bring)] an item of contraband into a penal institution.

[or]

[2] [(causes) (permits)] another to bring an item of contraband into a penal institution.

#### Committee Note

720 ILCS 5/31A-1.2(a) (West 1994) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.2(a) (1991)), added by P.A. 86-866, effective January 1, 1990; amended by P.A. 86-1003, effective January 1, 1990; P.A. 87-905, effective August 14, 1992; and P.A. 88-678, effective July 1, 1995.

Give Instruction 22.64.

Give Instruction 22.69C, defining the word “contraband,” Instruction 22.69, defining the term “penal institution,” and Instruction 22.69A, defining the term “employee.”

If the bracketed alternative “attempts to bring” is selected, give Instruction 22.69M, defining that phrase.

Do not give Instruction 4.09, which defines the term “penal institution” for other offenses, or Instruction 4.11, which defines the term “public employee” for other offenses.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**22.64 Issues In Unauthorized Bringing Of Contraband Into A Penal Institution By An Employee**

To sustain the charge of unauthorized bringing of contraband into a penal institution by an employee, the State must prove the following propositions:

*First Proposition:* That the defendant was an employee of a penal institution; and

[1] *Second Proposition:* That the defendant knowingly [(brought) (attempted to bring)] an item of contraband into a penal institution; and

[or]

[2] *Second Proposition:* That the defendant knowingly [(caused) (permitted)] another to bring an item of contraband into a penal institution; and

*Third Proposition:* That the defendant did so without authority from the person[s] [(designated) (authorized)] to grant such authority.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31A-1.2(a) (West 1994) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.2(a) (1991)), added by P.A. 86-866, effective January 1, 1990; amended by P.A. 86-1003, effective January 1, 1990; P.A. 87-905, effective August 14, 1992; and P.A. 88-678, effective July 1, 1995.

Give Instruction 22.63.

The bracketed numbers [1] and [2] correspond to the alternatives of the same number in Instruction 22.63, the definitional instruction for this offense. Select the corresponding alternative Second Proposition to the alternative selected from the definitional instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### **22.65 Definition Of Unauthorized Possession Of Contraband In A Penal Institution By An Employee**

A person commits the offense of unauthorized possession of contraband in a penal institution by an employee when he, being an employee of a penal institution, knowingly and without authority of any person [(designated) (authorized)] to grant such authority possesses [(cannabis) (a controlled substance) (a hypodermic syringe)] in a penal institution, regardless of the intent with which he possesses it.

#### **Committee Note**

720 ILCS 5/31A-1.2(b) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.2(b) (1991)), added by P.A. 86-866, effective January 1, 1990.

Give Instruction 22.66.

Give Instruction 22.69, defining the term “penal institution,” and Instruction 22.69A, defining the word “employee.”

Do not give Instruction 4.09, which defines the term “penal institution” for other offenses, or Instruction 4.11, which defines the term “public employee” for other offenses.

Use applicable bracketed material.

**22.66 Issues In Unauthorized Possession Of Contraband In A Penal Institution By An Employee**

To sustain the charge of unauthorized possession of contraband in a penal institution by an employee, the State must prove the following propositions:

*First Proposition:* That the defendant was an employee of a penal institution; and

*Second Proposition:* That the defendant knowingly possessed [(cannabis) (a controlled substance) (a hypodermic syringe)] regardless of the intent with which he possessed it; and

*Third Proposition:* That the defendant did so in a penal institution; and

*Fourth Proposition:* That the defendant did so without authority from the person[s] [(designated) (authorized)] to grant such authority.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31A-1.2(b) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.2(b) (1991)).

Give Instruction 22.65.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

## 22.67 Definition Of Unauthorized Delivery Of Contraband In A Penal Institution By An Employee

A person commits the offense of unauthorized delivery of contraband by an employee when he, being an employee of a penal institution, knowingly and without authority of any person [(designated) (authorized)] to grant such authority,

[1] [(delivers) (possesses with intent to deliver)] an item of contraband to any inmate of a penal institution.

[or]

[2] [(conspires to deliver) (solicits the delivery of)] an item of contraband to any inmate of a penal institution.

[or]

[3] [(causes) (permits)] the delivery of an item of contraband to any inmate of a penal institution.

[or]

[4] permits another person to attempt to deliver an item of contraband to any inmate of a penal institution.

### Committee Note

720 ILCS 5/31A-1.2(c) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.2(c) (1991)), added by P.A. 86-866, effective January 1, 1990; amended by P.A. 86-1003, effective January 1, 1990; P.A. 87-905, effective August 14, 1992; and P.A. 88-678, effective July 1, 1995.

Give Instruction 22.68.

Give Instruction 22.69C, defining the word “contraband,” Instruction 22.69, defining the term “penal institution,” and Instruction 22.69A, defining the word “employee.”

If the bracketed alternative in paragraph [2] “conspires to deliver” is selected, give Instruction 22.69N, defining that phrase.

If the bracketed alternative in paragraph [2] “solicits the delivery of” is selected, give Instruction 22.69P, defining that phrase.

If paragraph [4] is used, give Instruction 22.69M, defining the word “attempt.”

Do not give Instruction 4.09, which defines the term “penal institution” for other offenses, or Instruction 4.11, which defines the term “public employee” for other offenses.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**22.68 Issues In Unauthorized Delivery Of Contraband In A Penal Institution By An Employee**

To sustain the charge of unauthorized delivery of contraband in a penal institution by an employee, the State must prove the following propositions:

*First Proposition:* That the defendant was an employee of a penal institution; and

[1] *Second Proposition:* That the defendant knowingly [(delivered) (possessed with intent to deliver)] an item of contraband to an inmate of a penal institution;

[or]

[2] *Second Proposition:* That the defendant knowingly [(conspired to deliver) (solicited the delivery of)] an item of contraband to an inmate of a penal institution;

[or]

[3] *Second Proposition:* That the defendant [(caused) (permitted)] the delivery of an item of contraband to an inmate of a penal institution;

[or]

[4] *Second Proposition:* That the defendant knowingly permitted another person to attempt to deliver an item of contraband to an inmate of a penal institution;

and

*Third Proposition:* That the defendant did so without authority of the person[s] [(designated) (authorized)] to grant such authority.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/31A-1.2(c) (West 1994) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.2(c) (1991)), added by P.A. 86-866, effective January 1, 1990; amended by P.A. 86-1003, effective January 1, 1990; P.A. 87-905, effective August 14, 1992; and P.A. 88-678, effective July 1, 1995.

Give Instruction 22.67.

The bracketed numbers [1] through [4] correspond to the alternatives of the same number in Instruction 22.67, the definitional instruction for this offense. Select the corresponding alternative Second Proposition to the alternative selected from the definitional instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.69 Definition Of Penal Institution**

The term “penal institution” means any penitentiary, state farm, reformatory, prison, jail, house of corrections, police detention area, half-way house, or other institution or place for the incarceration or custody of persons under sentence for offenses, under arrest for an offense, a violation of probation, a violation of parole, or a violation of mandatory supervised release, or awaiting a bail setting hearing or preliminary hearing. However, where the place for incarceration or custody is housed within another public building, the term shall not apply to that part of such building unrelated to the incarceration or custody of persons.

**Committee Note**

720 ILCS 5/31A-1.1(c) and 31A-1.2(d)(1) (West 1999) (formerly Ill.Rev.Stat. ch. 38, §§ 31A-1.1(c) and 31A-1.2(d)(1) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition of the term “penal institution” differs from Instruction 4.09. This instruction applies only to violations of Chapter 720, Sections 31A-1.1 and 31A-1.2.

**22.69A Definition Of Employee Of A Penal Institution**

The word “employee” or term “employee of a penal institution” means any

[1] [(elected) (appointed)] [(officer) (trustee) (employee)] of [(a penal institution) (the governing authority of the penal institution)].

[or]

[2] person who performs services for the penal institution pursuant to a contract with the penal institution or its governing authority.

**Committee Note**

720 ILCS 5/31A-1.2(d)(2) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.2(d)(2) (1991)), added by P.A. 86-866, and amended by P.A. 86-1003, effective January 1, 1990.

This definition applies only to violations of Chapter 720, Section 31A-1.2.

Use applicable paragraphs and bracketed material.

The numbers appearing in brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**22.69B Definition Of Deliver Or Delivery**

The word “deliver” or “delivery” means the actual, constructive, or attempted transfer of possession of an item of contraband, with or without consideration, whether or not there is an agency relationship.

**Committee Note**

720 ILCS 5/31A-1.2(d)(3) (West 1999) (formerly Ill.Rev.Stat. ch. 38, § 31A-1.2(d)(3) (1991)), added by P.A. 86-866, effective January 1, 1990.

This definition applies only to violations of Chapter 720, Section 31A-1.2.

See 720 ILCS 570/102(h) for a similar definition.

**22.69C Definition Of Contraband**

The word “contraband” means [(alcoholic liquor) (cannabis) (a controlled substance) (a hypodermic syringe) (a hypodermic needle) (any instrument adapted for use of controlled substances or cannabis by subcutaneous injection) (a weapon) (a firearm) (firearm ammunition) (an explosive) (a tool to defeat security mechanisms) (a cutting tool)].

**Committee Note**

720 ILCS 5/31A-1.1(c)(2) and 31A-1.2(d)(4) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §§ 31A-1.1(c)(2) and 31A-1.2(d)(4) (1991)), amended by P.A. 86-866, effective January 1, 1990; and P.A. 88-678, effective July 1, 1995.

This definition applies only to violations of Sections 31A-1.1 and 31A-1.2.

Use applicable bracketed material.

**22.69D Definition Of Alcoholic Liquor**

The term “alcoholic liquor” means alcohol, spirits, wine, and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, which is capable of being consumed as a beverage by a human being.

**Committee Note**

720 ILCS 5/31A-1.1(c)(2)(i) and 31A-1.2(d)(4)(i) (West 1999) (formerly Ill.Rev.Stat. ch. 38, §§ 31A-1.1(c)(2)(i) and 31A-1.2(d)(4)(i) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition is based upon 235 ILCS 5/1-3.05, The Liquor Control Act of 1934, as amended.

**22.69E Definition Of Cannabis**

The word “cannabis” means marijuana, hashish, and other substances which are identified as including any parts of the plant *Cannabis Sativa*, whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

**Committee Note**

720 ILCS 5/31A-1.1(c)(2)(ii) and 31A-1.2(d)(4)(ii) (West 1999) (formerly Ill.Rev.Stat. ch. 38, §§ 31A-1.1(c)(2)(ii) and 31A-1.2(d)(4)(ii) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition is based upon 720 ILCS 550/3(a), as amended.



**22.69F Definition Of Controlled Substance**

The term “controlled substance” means \_\_\_\_\_.

**Committee Note**

720 ILCS 5/31A-1.1(c)(2)(iii) and 31A-1.2(d)(4)(iii) (West 1999) (formerly Ill.Rev.Stat. ch. 38, §§ 31A-1.1(c)(2)(iii) and 31A-1.2(d)(4)(iii) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

Insert in the blank the name of the controlled substance as defined in 720 ILCS 570/100 *et seq.*, the Illinois Controlled Substances Act, as amended.

**22.69G Definition Of Weapon**

The word “weapon” means a [(knife) (dagger) (dirk) (billy) (razor) (stiletto) (broken bottle) (piece of glass which could be used as a dangerous weapon) (\_\_\_\_\_)].

**Committee Note**

720 ILCS 5/31A-1.1(c)(2)(v) and 31A-1.2(d)(4)(v) (West 1999) (formerly Ill.Rev.Stat. ch. 38, §§ 31A-1.1(c)(2)(v) and 31A-1.2(d)(4)(v) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

Insert in the blank any device or implement designated in Chapter 720, Section 24-1(a)(1), (a)(3), or (a)(6), or any other dangerous weapon or instrument of like character.

Use applicable bracketed material.

**22.69H Definition Of Firearm**

The word “firearm” means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas, including, but not limited to,

[1] any pneumatic gun, spring gun, or B-B gun which expels a single globular projectile not exceeding .18 inch in diameter.

[or]

[2] any device used exclusively for signaling or safety and required or recommended by the United States Coast Guard or the Interstate Commerce Commission.

[or]

[3] any device used exclusively for the firing of stud cartridges, explosive rivets, or industrial ammunition.

[or]

[4] any device which is powered by electrical charging unit, such as batteries, and which fires one or several barbs attached to a length of wire and which, upon hitting a human, can send out current capable of disrupting the person’s nervous system in such a manner as to render him incapable of normal functioning, commonly referred to as a stun gun or taser.

**Committee Note**

720 ILCS 5/31A-1.1(c)(2)(vi) and 31A-1.2(d)(4)(vi) (West 1999) (formerly Ill.Rev.Stat. ch. 38, §§ 31A-1.1(c)(2)(vi) and 31A-1.2(d)(4)(vi) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition applies only to violations of Chapter 720, Sections 31A-1.1 and 31A-1.2.

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**22.69I Definition Of Firearm Ammunition**

The term “firearm ammunition” means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable to use in a firearm, including, but not limited to,

[1] any ammunition exclusively designed for the use with a device used exclusively for signing or safety and required or recommended by the United States Coast Guard or the Interstate Commerce Commission.

[or]

[2] any ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.

**Committee Note**

720 ILCS 5/31A-1.1(c)(2)(vii) and 31A-1.2(d)(4)(vii) (West 1999) (formerly Ill.Rev.Stat. ch. 38, §§ 31A-1.1(c)(2)(vii) and 31A-1.2(d)(4)(vii) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition applies only to violations of Chapter 720, Section 31A-1.1 and Section 31A-1.2.

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**22.69J Definition Of Explosive**

The word “explosive” means [(bomb) (bombshell) (grenade) (bottle or other container containing an explosive substance of over one-quarter ounce for like purpose such as black powder bombs and Molotov cocktails) (artillery projectiles) (\_\_\_\_\_ )].

**Committee Note**

720 ILCS 5/31A-1.1(c)(2)(viii) and 31A-1.2(d)(5)(viii) (West 1999) (formerly Ill.Rev.Stat. ch. 38, §§ 31A-1.1(c)(2)(viii) and 31A-1.2(d)(5)(viii) (1991)), as amended by P.A. 86-866, effective January 1, 1990.

This definition applies only to violations of Chapter 38, Sections 31A-1.1 and 31A-1.2.

Insert in the blank any other similar substance or device such as black powder bombs, Molotov cocktails, or artillery projectiles.

Use applicable bracketed material.

**22.69K Definition Of Tool To Defeat Security Mechanisms**

The phrase “tool to defeat security mechanisms” means, but is not limited to, a [(handcuff or security restraint key) (tool designed to pick locks) (device or instrument capable of unlocking [(handcuffs or security restraints) (doors to rooms) (doors to cells) (doors to gates) (doors to any area of the penal institution)] (\_\_\_\_\_))].

**Committee Note**

720 ILCS 5/31A-1.1(c)(ix) and 31A-1.2(c)(ix) (West 1994), added by P.A. 88-678, effective July 1, 1995.

This definition applies only to violations of Section 31A-1.1 and Section 31A-1.2.

Insert in the blank any other similar tool or devise.

Use applicable bracketed material.

**22.69L Definition Of Cutting Tool**

The term “cutting tool” means, but is not limited to, a [(hacksaw blade) (wirecutter) (device, instrument, or file capable of cutting through metal)].

**Committee Note**

720 ILCS 5/31A-1.1(c)(x) and 31A-1.2(c)(x) (West 1994), added by P.A. 88-678, effective July 1, 1995.

This definition applies only to violations of Section 31A-1.1 and Section 31A-1.2.

Use applicable bracketed material.

**22.69M Definition Of Attempt—Contraband Into A Penal Institution**

A person attempts to [(bring contraband into) (deliver contraband in)] a penal institution when he, with the intent to [(bring contraband into) (deliver contraband in)] a penal institution, does any act which constitutes a substantial step toward [(bringing contraband into) (delivering contraband in)] a penal institution.

The [(bringing of contraband into) (delivery of contraband in)] a penal institution need not have been completed.

**Committee Note**

This definitional instruction applies only to the offenses of (1) unauthorized bringing of contraband into a penal institution by an employee, or (2) unauthorized delivery of contraband in a penal institution by an employee, 720 ILCS 5/31A-1.2(a)(1) and 31A-1.2(c)(4) (West 1994). Do not use this instruction in conjunction with any other offense.

Use applicable bracketed material.



**22.69N Definition Of Conspiracy—Contraband In A Penal Institution**

A person conspires to deliver when he, with intent that the offense of unauthorized delivery of contraband in a penal institution by an employee be committed, agrees with [(another) (others)] to the commission of the offense and an act in furtherance of the agreement is performed by any party to the agreement.

An agreement may be implied from the conduct of the parties although they acted separately or by different means and did not come together or enter into an express agreement.

It is not necessary that the conspirators succeed in delivering an item of contraband in a penal institution.

**Committee Note**

This definitional instruction applies only to violations of unauthorized delivery of contraband in a penal institution by an employee, 720 ILCS 5/31A-1.2(c)(2) (West 1994). Do *not* use this instruction in conjunction with any other offense.

See *People v. Foster*, 99 Ill. 2d 48, 75 Ill. Dec. 411, 457 N.E.2d 405 (1983), regarding the distinction between unilateral and bilateral theories of conspiracy.

Use applicable bracketed material.

**22.69P Definition Of Solicitation—Contraband In A Penal Institution**

A person solicits the delivery of an item when, with intent that the offense of unauthorized delivery of contraband in a penal institution by an employee be committed, he [(commands) (encourages) (urges) (incites) (requests) (advises)] another to commit the offense of unauthorized delivery of contraband in a penal institution by an employee.

The delivery of contraband in a penal institution need not have been completed.

**Committee Note**

720 ILCS 5/2-20 (West 1994) (formerly Ill.Rev.Stat. ch. 38, § 2-20 (1991)).

This definitional instruction applies only to violations of unauthorized delivery of contraband in a penal institution by an employee, 720 ILCS 5/31A-1.2(c)(2) (West 1994). Do not use this instruction in conjunction with any other offense.

Use applicable bracketed material.

**22.70 Definition Of False Personation Of A Peace Officer**

A person commits the offense of false personation of a peace officer when he knowingly and falsely represents himself to be a peace officer of any jurisdiction.

**Committee Note**

720 ILCS 5/32-5.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-5.1 (1991)).

Give Instruction 22.71.

Give Instruction 4.08, defining the term “peace officer.”

**22.71 Issue In False Personation Of A Peace Officer**

To sustain the charge of false personation of a peace officer, the State must prove the following proposition:

That the defendant knowingly and falsely represented himself to be a peace officer of any jurisdiction.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-5.1 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-5.1 (1991)).

Give Instruction 22.70.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in the above proposition. See Instruction 5.03.



**22.72 Definition Of Aggravated False Personation Of A Peace Officer**

A person commits the offense of aggravated false personation of a peace officer when he knowingly and falsely represents himself to be a peace officer of any jurisdiction while [(attempting to commit) (committing)] a felony.

**Committee Note**

720 ILCS 5/32-5.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-5.2 (1991)).

Give Instruction 22.73.

Give Instruction 4.08, defining the term “peace officer.”

Use applicable bracketed material.

**22.73 Issues In Aggravated False Personation Of A Peace Officer**

To sustain the charge of aggravated false personation of a peace officer, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly and falsely represented himself to be a peace officer of any jurisdiction; and

*Second Proposition:* That when the defendant did so, he was [(committing) (attempting to commit)] the felony of \_\_\_\_\_.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/32-5.2 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 32-5.2 (1991)).

Give Instruction 22.72.

Insert in the blank the name of the felony defendant is charged with committing or attempting to commit.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.74 Definition Of Violation Of Bail Bond By Possessing A Firearm****Committee Note**

IPI 22.74, definition of violation of bail bond by possessing a firearm, and 22.75, issues in violation of bail bond by possessing a firearm, have been renumbered 22.53A and 22.54A respectively.

**22.75 Definition Of Escape-Failure To Comply With A Condition Of Electronic Home Monitoring Detention Program**

A person [(charged with) (convicted of)] a [(felony) (misdemeanor)] commits the offense of escape when he is conditionally released from a supervising authority through an electronic home monitoring detention program and [while armed with a dangerous weapon,] he knowingly violates a condition of the electronic home monitoring detention program by \_\_\_\_\_.

**Committee Note**

730 ILCS 5/5-8A-4.1 (West 2019), added by P.A. 89-848, effective January 1, 1997.

Give Instruction 22.76

Insert in the blank the appropriate condition.

Use applicable bracketed material.

When this offense is committed while armed with a dangerous weapon, this offense becomes a Class 1 felony. See Section 5/9A-4.1(c). Use the bracketed phrase “[while armed with a dangerous weapon,]” when the Class 1 felony version of this offense is charged.

For definitions of the terms “home detention” and “supervising authority,” see 730 ILCS 5/5-8A-2 (West 2019).



**22.76 Issues In Escape-Failure To Comply With A Condition Of Electronic Home Monitoring Detention Program**

To sustain the charge of escape, the State must prove the following propositions:

*First Proposition:* That the defendant was [(charged with) (convicted of)] a [(felony) (misdemeanor)]; and

*Second Proposition:* That the defendant was conditionally released from a supervising authority through an electronic home monitoring detention program; and

*Third Proposition:* That the defendant knowingly violated a condition of the electronic home monitoring detention program by \_\_\_\_\_[(.) (; and)]

*Fourth Proposition:* [(That when the defendant did so, he was armed with a dangerous weapon.)]

If you find from your consideration of all the evidence that each one of these propositions has been proven beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proven beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

730 ILCS 5/5-8A-4.1 (West 2019), added by P.A. 89-894, effective January 1, 1997.

Give Instruction 22.75.

Insert in the blank the appropriate condition.

Use the bracketed Fourth Proposition only when the Class 1 felony version of this offense is charged. See Committee Note to Instruction 22.75.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**22.77 Definition Of Defrauding A Drug And Alcohol Screening Test**

A person commits the offense of defrauding a drug or alcohol screening test when he

[1] [(manufactures) (sells) (gives away) (distributes) (markets)] synthetic or human substances or products in this State to defraud a drug or alcohol screening test.

[or]

[2] transports urine into this State with the intent of using the synthetic or human substances or products to defraud a drug or alcohol screening test.

[or]

[3] [(substitutes) (spikes)] a sample with the intent of attempting to foil or defeat a drug or alcohol screening test.

[or]

[4] advertises a [(sample substitution) (spiking device or measure)] with the intent of attempting to foil or defeat a drug or alcohol screening test.

[or]

[5] adulterates synthetic or human substances with the intent to defraud a drug or alcohol screening test.

[or]

[6] [(manufactures) (sells) (possesses)] adulterants that are intended to be used to adulterate synthetic or human substances with the intent of defrauding a drug or alcohol screening test.

**Committee Note**

Former Instruction 22.77 (Issues In Escape-Failure to Comply With A Condition Of Electronic Home Monitoring Detention Program) has been re-numbered as Instruction 22.76.

720 ILCS 5/17-57 (West 2021).

Give Instruction 22.78.

Give Instruction 22.77A, defining the phrase “drug or alcohol screening test.”

When applicable, give Instruction 22.77B, Inferences in Defrauding Drug and Alcohol Screening Test.

When paragraph [3] is used, a substitution does not require proof that the substance submitted during a screening test is not the urine of the person being tested. *People v. Pearson*, 2020 IL App (2d) 180182.

Use applicable bracketed paragraphs and material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**22.77A Definition Of A Drug Or Alcohol Screening Test**

A drug or alcohol screening test includes, but is not limited to, urine testing, hair follicle testing, perspiration testing, saliva testing, blood testing, fingernail testing, and eye drug testing.

**Committee Note**

720 ILCS 5/17-57(d) (West 2021).

Section 17-57(d) provides that this definition applies to this offense only.

**22.77B Inferences In Defrauding A Drug And Alcohol Screening Test**

If you find that [(a heating element or device used to thwart) (instructions that provide a method for thwarting)] a drug or alcohol screening test accompanies the [(sale) (giving) (distribution) (marketing)] of synthetic or human substances or products, you may infer intent to defraud a drug and alcohol screening test.

You are never required to make this inference. It is for the jury to determine whether the inference should be made. You should consider all of the evidence in determining whether to make this inference.

**Committee Note**

720 ILCS 5/17-57(b) (West 2021).

Section 17-57(b) does not bar a trier of fact from inferring that a person who uses a device like a Whizzinator to provide a urine sample has made a substitution under the statute. *People v. Pearson*, 2020 IL App (2d) 180182.

The Committee notes that this inference is permissive, not mandatory. *People v. Pomykala*, 203 Ill. 2d 198, 784 N.E.2d 784 (2003); *People v. Funches*, 212 Ill. 2d 334, 818 N.E.2d 342 (2004). Mandatory presumptions are unconstitutional in criminal cases. *People v. Watts*, 181 Ill. 2d 133, 692 N.E.2d 315 (1998). Accordingly, the Committee drafted the second paragraph of this instruction.



**22.78 Issues In Defrauding A Drug And Alcohol Screening Test**

To sustain a charge of defrauding a drug or alcohol screening test, the State must prove the following proposition:

[1] That the defendant [(manufactured) (sold) (gave away) (distributed) (marketed)] synthetic or human substances or other products in this State.

[or]

[2] That the defendant transported urine into this State with the intent of using the synthetic or human substances or other products to defraud a drug or alcohol screening test.

[or]

[3] That the defendant [(substituted) (spiked)] a sample with the intent of attempting to foil or defeat a drug or alcohol screening test.

[or]

[4] That the defendant advertised a [(sample substitution) (spiking device or measure)] with the intent of attempting to foil or defeat a drug or alcohol screening test.

[or]

[5] That the defendant adulterated synthetic or human substances with the intent to defraud a drug or alcohol screening test.

[or]

[6] That the defendant [(manufactured) (sold) (possessed)] adulterants that are intended to be used to adulterate synthetic or human substances with the intent of defrauding a drug or alcohol screening test.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

720 ILCS 5/17-57 (West 2021).

Give Instruction 22.77.

The bracketed numbers [1] through [6] correspond to the alternatives of the same number in Instruction 22.77. Select the corresponding alternatives.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

## Chapter 23.00

# TRAFFIC

### SYNOPSIS

- 23.01 Definition Of Fleeing Or Attempting To Elude A Police Officer
- 23.02 Issues In Fleeing Or Attempting To Elude A Police Officer
- 23.03 Definition Of Aggravated Fleeing Or Attempting To Elude A Police Officer—Damage To Property
- 23.03X Definition Of Aggravated Fleeing Or Attempting To Elude A Police Officer—Bodily Injury
- 23.04 Issues In Aggravated Fleeing Or Attempting To Elude A Police Officer
- 23.04X Issues In Aggravated Fleeing Or Attempting To Elude A Police Officer—Bodily Injury
- 23.05 Definition Of Leaving The Scene Of An Accident Involving Death Or Personal Injury
- 23.06 Issues In Leaving The Scene Of An Accident Involving Death Or Personal Injury
- 23.07 Definition Of Aggravated Leaving The Scene Of An Accident Involving Death Or Personal Injury
- 23.08 Issues In Aggravated Leaving The Scene Of An Accident Involving Death Or Personal Injury
- 23.09 Definition Of Leaving The Scene Of An Accident Involving Damage To A Vehicle
- 23.10 Issues In Leaving The Scene Of An Accident Involving Damage To A Vehicle
- 23.11 Definition Of Duty To Give Information Or Render Aid
- 23.12 Definition Of Personal Injury—Offense Of Leaving The Scene Of An Accident
- 23.13 Definition Of Driving Under The Influence Of Alcohol
- 23.14 Issues In Driving Under The Influence Of Alcohol
- 23.15 Definition Of Driving Under The Influence Of Drugs
- 23.16 Issues In Driving Under The Influence Of Drugs
- 23.17 Definition Of Driving Under The Combined Influence Of Alcohol And Drugs
- 23.18 Issues In Driving Under The Combined Influence Of Alcohol And Drugs
- 23.19 Definition Of Driving With An Alcohol Concentration Of 0.08 Or More
- 23.20 Issues In Driving With An Alcohol Concentration Of 0.08 Or More
- 23.21 Definition Of Driving With A Drug, Substance, Or Compound In Blood Or Urine
- 23.22 Issues In Driving With A Drug, Substance, Or Compound In Blood Or Urine

- 23.23–23.24    **Reserved**
- 23.25        **Definition Of Driving Under The Influence—Felony—Driving An Occupied School Bus As Enhancing Factor**
- 23.26        **Issues In Driving Under The Influence—Felony—Driving An Occupied School Bus As Enhancing Factor**
- 23.27        **Definition Of Driving Under The Influence—Felony—Accident As Enhancing Factor**
- 23.28        **Issues In Driving Under The Influence—Felony—Accident As Enhancing Factor**
- 23.28A       **Definition Of Proximate Cause In Aggravated Driving Under The Influence-Accident And Injury As Enhancing Factor**
- 23.29        **Definition Of Under The Influence Of Alcohol**
- 23.30        **Presumptions On Being Under The Influence Of Alcohol**
- 23.30A       **Definition Of Alcohol Concentration**
- 23.30B       **Prescription Not A Defense**
- 23.31        **Definition Of Reckless Driving**
- 23.31X       **Definition Of Aggravated Reckless Driving**
- 23.32        **Issue In Reckless Driving**
- 23.32X       **Issues In Aggravated Reckless Driving**
- 23.33        **Definition Of Drag Racing**
- 23.34        **Issues In Drag Racing**
- 23.35        **Definition Of Possession Of Stolen Or Converted Vehicle**
- 23.35A       **Definition Of Converted**
- 23.35B       **Definition Of Essential Parts**
- 23.36        **Issues In Possession Of Stolen Or Converted Vehicle**
- 23.36A       **Inference From Possession Of Stolen Or Converted Vehicle**
- 23.37        **Definition Of Possession Of A Vehicle With An Altered Identification Number**
- 23.37A       **Definition Of Identification Number**
- 23.38        **Issues In Possession Of A Vehicle With An Altered Identification Number**
- 23.39        **Definition Of Driving While Driver's License Is Suspended Or Revoked**
- 23.40        **Issues In Driving While Driver's License Is Suspended Or Revoked**
- 23.41        **Definition Of Subsequent Offense Of Driving While Driver's License Is Suspended Or Revoked**
- 23.42        **Issues In Subsequent Offense Of Driving While Driver's License Is Suspended Or Revoked**
- 23.43        **Definition Of Actual Physical Control**
- 23.43A       **Definition Of Vehicle**
- 23.43B       **Definition Of Motor Vehicle**
- 23.45        **Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus**
- 23.46        **Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus**



- 23.47 Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Injuries
- 23.47A Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Death
- 23.48 Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Injuries
- 23.48A Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Death
- 23.49 Definition Of Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus
- 23.50 Issues In Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus
- 23.51 Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Injuries
- 23.51A Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Death
- 23.52 Issues In Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Injuries
- 23.52A Issues In Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Death
- 23.53 Definition Of Aggravated Driving Under The Influence Of Drugs—Driving A School Bus
- 23.54 Issues In Aggravated Driving Under The Influence Of Drugs—Driving A School Bus
- 23.55 Definition Of Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Injuries
- 23.55A Definition Of Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Death
- 23.56 Issues In Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Injuries
- 23.56A Issues In Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Death
- 23.57 Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving A School Bus
- 23.58 Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving A School Bus
- 23.59 Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Injuries
- 23.59A Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds—Accident Resulting In Death
- 23.60 Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Injuries
- 23.60A Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds—Accident Resulting In Death



- 23.61 Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Driving A School Bus
- 23.62 Issues In Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Driving A School Bus
- 23.63 Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Accident Resulting In Injuries
- 23.63A Definition Of Aggravated Driving With A Drug, Substance, Or Intoxicating Compound In Breath, Blood Or Urine—Accident Resulting In Death
- 23.64 Issues In Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Accident Resulting In Injuries
- 23.64A Issues In Aggravated Driving With A Drug, Substance, Or Intoxicating Compound In Breath, Blood Or Urine—Accident Resulting In Death
- 23.65 Definition Of Speeding
- 23.65A Definition Of Speeding While Passing School
- 23.65B Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
- 23.65C Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.65D Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving Without Liability Insurance
- 23.65E Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Defendant Does Not Possess Drivers License
- 23.65F Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.66 Issues In Speeding
- 23.66A Issues In Speeding While Passing School
- 23.66B Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Bodily Harm To A Child Under He Age Of 16
- 23.66C Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.66D Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving Without Liability Insurance
- 23.66E Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Defendant Does Not Possess Drivers License
- 23.66F Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.67 Definition Of Transportation Of Alcoholic Liquor In A Motor Vehicle—Driver
- 23.67B Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
- 23.67C Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.67D Definition Of Aggravated Driving Under The Influence Of Alcohol—Driving

**Without Liability Insurance**

- 23.67E Definition Of Aggravated Driving Under The Influence Of Alcohol—Defendant Does Not Possess Drivers License
- 23.67F Definition Of Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.68 Issues In Transportation Of Alcoholic Liquor In A Motor Vehicle—Driver
- 23.68B Issues In Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
- 23.68C Issues In Aggravated Driving Under The Influence Of Alcohol—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.68D Issues In Aggravated Driving Under The Influence Of Alcohol—Driving Without Liability Insurance
- 23.68E Issues In Aggravated Driving Under The Influence Of Alcohol—Defendant Does Not Possess Drivers License
- 23.68F Issues In Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.69 Definition Of Possession Of Alcoholic Liquor In A Motor Vehicle—Passenger
- 23.69B Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
- 23.69C Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.69D Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Driving Without Liability Insurance
- 23.69E Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Defendant Does Not Possess Drivers License
- 23.69F Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.70 Issues In Possession Of Alcoholic Liquor In A Motor Vehicle—Passenger
- 23.70B Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
- 23.70C Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.70D Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Driving Without Liability Insurance
- 23.70E Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Defendant Does Not Possess Drivers License
- 23.70F Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.71 Definition Of Aggravated Possession Of Stolen Or Converted Motor Vehicles
- 23.71B Definition Of Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Bodily Harm To A Child Under The Age Of 16

- 23.71C Definition Of Aggravated Driving Under The Influence Of Drugs—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.71D Definition Of Aggravated Driving Under The Influence Of Drugs—Driving Without Liability Insurance
- 23.71E Definition Of Aggravated Driving Under The Influence Of Drugs—Defendant Does Not Possess Drivers License
- 23.71F Definition Of Aggravated Driving Under The Influence Of Drugs—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.72 Issues In Aggravated Possession Of Stolen Or Converted Motor Vehicles
- 23.72B Issues In Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
- 23.72C Issues In Aggravated Driving Under The Influence Of Drugs—Accident While Driving In A School Speed Zone As An Enhancing Factor
- 23.72D Issues In Aggravated Driving Under The Influence Of Drugs—Driving Without Liability Insurance
- 23.72E Issues In Aggravated Driving Under The Influence Of Drugs—Defendant Does Not Possess Drivers License
- 23.72F Issues In Aggravated Driving Under The Influence Of Drugs—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.73 Definition Of Possession Or Use Of Radar Detection Devices
- 23.73A Definition Of Equipped—Possession Or Use Of Radar Detection Devices Or Radar Jamming Devices
- 23.73B Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
- 23.73C Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.73D Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving Without Liability Insurance
- 23.73E Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Defendant Does Not Possess Drivers License
- 23.73F Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board
- 23.74 Issues In Possession Or Use Of Radar Detection Devices
- 23.74B Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Bodily Harm To A Child Under The Age Of 16
- 23.74C Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds—Accident While Driving In A School Speed Zone As Enhancing Factor
- 23.74D Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving Without Liability Insurance
- 23.74E Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Defendant Does Not Possess Drivers License
- 23.74F Issues In Aggravated Driving Under The Combined Influence Of Alcohol And



**Drugs—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

**23.75** Definition Of Possession Or Use Of Radar Jamming Devices

**23.75B** Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Accident Resulting In Bodily Harm To A Child Under The Age Of 16

**23.75C** Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Accident While Driving In A School Speed Zone As Enhancing Factor

**23.75D** Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving Without Liability Insurance

**23.75E** Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Defendant Does Not Possess Drivers License

**23.75F** Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

**23.76** Issues In Possession Or Use Of Radar Jamming Devices

**23.76B** Issues In Aggravated Driving With A Drug, Substance Or Compound In Breath, Blood, Or Urine—Accident Resulting In Bodily Harm To A Child Under The Age Of 16

**23.76C** Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Accident While Driving In A School Speed Zone As Enhancing Factor

**23.76D** Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving Without Liability Insurance

**23.76E** Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Defendant Does Not Possess Drivers License

**23.76F** Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board

**23.77** Definition Of Improper Lane Usage

**23.78** Issues In Improper Lane Usage

**23.79** Definition Of Driving On Approach To An Emergency Vehicle

**23.79X** Definition Of Authorized Emergency Vehicle

**23.80** Issues In Driving On Approach To An Emergency Vehicle



**23.01 Definition Of Fleeing Or Attempting To Elude A Police Officer**

A person commits the offense of fleeing or attempting to elude a police officer when, as a driver or operator of a motor vehicle, having been given a visual or audible signal by a peace officer directing him to bring his vehicle to a stop, he wilfully fails or refuses to obey the signal, increases his speed, extinguishes his lights, or otherwise flees or attempts to elude the officer. The signal given by the peace officer may be by hand, voice, siren, or by red or blue light. However, the officer giving the signal must be in police uniform[, and, if driving a vehicle, that vehicle must display illuminated, oscillating, rotating, or flashing red or blue lights, which when used in conjunction with an audible horn or siren, would indicate the vehicle to be an official police vehicle].

**Committee Note**

625 ILCS 5/11-204(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 11-204(a) (1991)).

Give Instruction 23.02.

Give Instruction 4.08, defining the term “peace officer.”

720 ILCS 5/4-5(b) provides that conduct performed “knowingly” is performed “wilfully” unless the statute using the word “wilfully” clearly requires another meaning.

See *People v. Marquis*, 54 Ill.App.3d 209, 11 Ill.Dec. 918, 369 N.E.2d 372 (4th Dist.1977), and *People v. Pena*, 170 Ill.App.3d 347, 120 Ill.Dec. 641, 524 N.E.2d 671 (2d Dist.1988), concerning the required mental state of wilfulness.

Use bracketed material when applicable.

**23.02 Issues In Fleeing Or Attempting To Elude A Police Officer**

To sustain the charge of fleeing or attempting to elude a police officer, the State must prove the following propositions:

*First Proposition:* That the defendant was the driver or operator of a motor vehicle; and

*Second Proposition:* That the defendant was given a visual or audible signal by a police officer directing him to bring his vehicle to a stop; and

*Third Proposition:* That the peace officer was in police uniform[, and, if the officer was driving a vehicle, that the vehicle displayed illuminated, oscillating, rotating, or flashing red or blue lights, which when used in conjunction with an audible horn or siren, would indicate the vehicle to be an official police vehicle]; and

*Fourth Proposition:* That the defendant wilfully [(failed or refused to obey such signal) (increased his speed) (extinguished his lights) (\_\_\_\_\_)] in order to flee or attempt to elude the officer.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-204(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 11-204(a) (1991)).

Give Instruction 23.01.

Insert in the blank in the Fourth Proposition, when applicable, a description of the conduct not included in the statute by which it is charged that the defendant intended to flee or to elude the officer.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

**23.03 Definition Of Aggravated Fleeing Or Attempting To Elude A Police Officer—Damage To Property**

A person commits the offense of aggravated fleeing or attempting to elude a police officer [causing damage to property in excess of \$300] when, in committing the offense of fleeing or attempting to elude a police officer, he willfully flees or attempts to elude the officer at a rate of speed at least 21 miles per hour over the legal speed limit and causes damage in excess of \$300 to property.

**Committee Note**

625 ILCS 5/11-204.1 (West 2008) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-204.1 (1991)), amended by P.A. 88-679, effective July 1, 1995.

Give Instruction 23.04.

Give Instruction 23.01, defining the term “fleeing or attempting to elude a police officer.”

If the definition of “police officer” is an issue, give the definition in the Vehicle Code (625 ILCS 5/1-162 (West 2007)).

See Instruction 5.01B, defining the word “willfully”.

P.A. 88-679, effective July 1, 1995, increased the penalty for this offense from a Class A misdemeanor to a Class 4 felony when the violation results in bodily injury. Thus, the element of causing bodily injury must be proved beyond a reasonable doubt independently from damage to property. As a result, this instruction should only be given when aggravated fleeing or attempting to elude police officer resulting in property damage over \$300 is at issue. See Instruction 23.03X.

P.A. 90-134, effective July 22, 1997, deleted “private” preceding “property.”

Include the bracketed material “[causing damage to property in excess of \$300]” when the jury is also to be instructed upon this offense involving bodily injury. See Instruction 23.03X.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.03X Definition Of Aggravated Fleeing Or Attempting To Elude A Police Officer—Bodily Injury**

With the changes to IPI 23.03 and 23.04 the Committee has now eliminated this instruction.



**23.04 Issues In Aggravated Fleeing Or Attempting To Elude A Police Officer**

To sustain the charge of aggravated fleeing or attempting to elude a police officer [causing damage to property in excess of \$300], the State must prove the following propositions:

*First Proposition:* That the defendant was the driver or operator of a motor vehicle; and

*Second Proposition:* That the defendant was given a visual or audible signal by a police officer directing the defendant to bring his vehicle to a stop; and

*Third Proposition:* That the police officer was in police uniform [and, if the officer was driving a vehicle, that vehicle displayed illuminated, oscillating, rotating, or flashing red or blue lights, which when used in conjunction with an audible horn or siren, would indicate the vehicle to be an official police vehicle]; and

*Fourth Proposition:* That the defendant willfully fled or attempted to elude the police officer; and

*Fifth Proposition:* That, when willfully fleeing or attempting to elude the police officer, the defendant traveled at a rate of speed at least 21 miles per hour over the legal speed limit; and

*Sixth Proposition:* That, when willfully fleeing or attempting to elude the police officer, the defendant caused damage in excess of \$300 to property.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-204.1 (West 2008) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-204.1 (1991)), amended by P.A. 88-679, effective July 1, 1995.

Give Instruction 23.03.

P.A. 88-679, effective July 1, 1995, increased the penalty for this offense from a Class A misdemeanor to a Class 4 felony when the violation results in bodily injury. Thus, the element of causing bodily injury must be proved beyond a reasonable doubt independently from damage to property. As a result, this instruction should only be given when aggravated fleeing or attempting to elude police officer resulting in property damage over \$300 is at issue. See Instruction 23.04X.

P.A. 90-134, effective July 22, 1997 deleted “private” preceding “property.”

Include the bracketed material “[causing damage to property in excess of \$300]” when the jury is also to be instructed upon this offense involving bodily injury. See Instruction 23.04X.

When accountability is an issue, ordinarily insert the phrase “or one for whose

conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

**23.04X Issues In Aggravated Fleeing Or Attempting To Elude A Police Officer—Bodily Injury**

With the changes to IPI 23.03 and 23.04 the Committee has now eliminated this instruction.

### **23.05 Definition Of Leaving The Scene Of An Accident Involving Death Or Personal Injury**

A person commits the offense of leaving the scene of an accident involving death or personal injury when he is the driver of a vehicle involved in a motor vehicle accident resulting in death or personal injury to any person and, with knowledge that an accident has occurred, he [(fails to immediately stop his vehicle at the scene of the accident) (fails to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain there until he has performed the duty to give information and render aid.

#### **Committee Note**

625 ILCS 5/11-401(a) (West, 1999) (formerly Ill.Rev. Stat. ch. 951/2, § 11-401 (a) (1991)).

Give Instruction 23.06.

When the issue is raised by the evidence, give Instruction 23.11, defining the phrase “duty to give information and render aid,” and Instruction 23.12, defining the term “personal injury” in the context of this offense. The meaning of the phrase “involved in a motor vehicle accident” is discussed in *People v. Kerger*, 191 Ill.App.3d 405, 138 Ill.Dec. 806, 548 N.E.2d 36 (2d Dist.1989).

See *People v. Nunn*, 77 Ill.2d 243, 32 Ill.Dec. 914, 396 N.E.2d 27 (1979), and *People v. Janik*, 127 Ill.2d 390, 130 Ill.Dec. 427, 537 N.E.2d 756 (1989), concerning the required mental state.

Use applicable bracketed material.



**23.06 Issues In Leaving The Scene Of An Accident Involving Death Or Personal Injury**

To sustain the charge of leaving the scene of an accident involving death or personal injury, the State must prove the following propositions:

*First Proposition:* That the defendant was the driver of a vehicle involved in a motor vehicle accident; and

*Second Proposition:* That the motor vehicle accident resulted in a death or personal injury; and

*Third Proposition:* That the defendant knew an accident had occurred; and

*Fourth Proposition:* That the defendant [(failed to immediately stop his vehicle at the scene of the accident) (failed to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain at the scene of the accident until he had performed the duty to give information and render aid.

If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-401(a) (West, 1999) (formerly Ill.Rev. Stat. ch. 951/2, § 11-401(a) (1991)).

Give Instruction 23.05.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 23.07 Definition Of Aggravated Leaving The Scene Of An Accident Involving Death Or Personal Injury

A person commits the offense of aggravated leaving the scene of an accident involving death or personal injury when he is the driver of a vehicle involved in a motor vehicle accident resulting in death or personal injury to another and with knowledge that an accident has occurred, and with knowledge that the accident involved another person, he [(fails to immediately stop his vehicle at the scene of the accident) (fails to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain at the scene of the accident until he has performed the duty to give information and render aid and [(fails to report the accident within one-half hour after the motor vehicle accident) (if hospitalized and incapacitated from reporting at any time within one-half hour of the motor vehicle accident fails to report the accident within one-half hour after being discharged from the hospital)] at a nearby police station or sheriffs office, giving the place of the accident, the date, the approximate time, the driver's name and address, the registration number of the vehicle driven, and the names of all other occupants of that vehicle.

#### Committee Note

625 ILCS 5/11-401(b) (West 2007) (formerly Ill.Rev.Stat. ch 95 1/2, § 11-401(b) (1991)).

Give Instruction 23.08.

When the issue is raised by the evidence, give Instruction 23.11, defining the phrase "duty to give information and render aid," and Instruction 23.12, defining the term "personal injury" in the context of this offense. The meaning of the phrase "involved in a motor vehicle accident" is discussed in *People v. Kerger*, 191 Ill.App.3d 405, 138 Ill.Dec. 806, 548 N.E.2d 36 (2d Dist. 1989).

See *People v. Nunn*, 77 Ill.2d 243, 32 Ill.Dec. 914, 396 N.E.2d 27 (1979), and *People v. Janik*, 127 Ill.2d 390, 130 Ill.Dec. 427, 537 N.E.2d 756 (1989), concerning the required mental state.

Knowledge that the accident involved another person is an element of this offense. *People v. Digirolamo*, 179 Ill.2d 24, 227 Ill.Dec. 779, 688 N.E.2d 116 (1997).

Public Act 93-684, effective January 1, 2005, reduced the reporting period from one hour to one-half hour.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

**23.08 Issues In Aggravated Leaving The Scene Of An Accident Involving Death Or Personal Injury**

To sustain the charge of aggravated leaving the scene of an accident involving death or personal injury, the State must prove the following propositions:

*First Proposition:* That the defendant was the driver of a vehicle involved in a motor vehicle accident; and

*Second Proposition:* That the motor vehicle accident resulted in a death or personal injury; and

*Third Proposition:* That the defendant knew an accident had occurred; and

*Fourth Proposition:* That the defendant knew that the accident involved another person; and

*Fifth Proposition:* That the defendant [(failed to immediately stop his vehicle at the scene of the accident) (failed to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain at the scene of the accident until the defendant had performed the duty to give information and render aid; and

*Sixth Proposition:* That the defendant [(failed to report the accident within one-half hour after the motor vehicle accident)(if hospitalized and incapacitated from reporting at any time within one-half hour of the motor vehicle accident failed to report the accident within one-half hour after being discharged from the hospital)] at a nearby police station or sheriffs office, giving the place of the accident, the date, the approximate time, the defendant's name and address, the registration number of the vehicle driven, and the names of all other occupants of that vehicle.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-401(b) (West 2007) (formerly Ill.Rev. Stat. ch. 95 1/2, § 11-401(b) (1991).

Give Instruction 23.07.

Knowledge that the accident involved another person is an element of this offense. *People v. Digirolamo*, 179 Ill.2d 24, 227 Ill.Dec. 779, 688 N.E.2d 116 (1997).

Public Act 93-684, effective January 1, 2005, reduced the reporting period from one hour to one-half hour.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**23.09 Definition Of Leaving The Scene Of An Accident Involving Damage To A Vehicle**

A person commits the offense of leaving the scene of an accident involving damage to a vehicle when he is the driver of a vehicle involved in a motor vehicle accident resulting in damage to a vehicle driven or attended by another and, with knowledge that an accident has occurred, he [(fails to immediately stop his vehicle at the scene of the accident) (fails to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain at the scene of the accident until he has performed the duty to give information and render aid.

**Committee Note**

625 ILCS 5/11-402 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 11-402 (1991)).

Give Instruction 23.10.

When the issue is raised by the evidence, give Instruction 23.11, defining the phrase “duty to give information and render aid.” The meaning of the phrase “involved in a motor vehicle accident” is discussed in *People v. Kerger*, 191 Ill.App.3d 405, 138 Ill.Dec. 806, 548 N.E.2d 36 (2d Dist.1989).

See *People v. Hileman*, 185 Ill.App.3d 510, 133 Ill.Dec. 489, 541 N.E.2d 700 (5th Dist.1989), concerning the required mental state.

Use applicable bracketed material.

### 23.10 Issues In Leaving The Scene Of An Accident Involving Damage To A Vehicle

To sustain the charge of leaving the scene of an accident involving damage to a vehicle, the State must prove the following propositions:

*First Proposition:* That the defendant was the driver of a vehicle involved in a motor vehicle accident; and

*Second Proposition:* That damage to a vehicle driven or attended by another person resulted from the accident; and

*Third Proposition:* That the defendant knew an accident had occurred; and

*Fourth Proposition:* That the defendant [(failed to immediately stop the vehicle at the scene of the accident) (failed to stop as close to the scene of the accident as possible without obstructing traffic more than necessary and forthwith return to the scene of the accident)] and remain at the scene of the accident until the defendant had performed the duty to give information and render aid.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-402 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 11-402 (1991)).

Give Instruction 23.09.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**23.11 Definition Of Duty To Give Information Or Render Aid**

The phrase “the duty to give information and render aid” means that the driver of any vehicle involved in a motor vehicle accident resulting in [(death) (personal injury) (damage to a vehicle)] shall (1) supply the driver’s name and address, (2) supply the registration number and the name of the owner of the vehicle the driver is operating, and (3) exhibit his driver’s license upon request if the license is available. Such information is to be supplied to any person struck by a vehicle and to any person driving, occupying, or attending a vehicle involved in a collision. [If none of the persons entitled to this information is in a position to receive and understand such information, and no police officer is present, the driver shall forthwith report such accident at the nearest office of a duly authorized police authority, disclosing all this information.]

[In addition, the driver of any vehicle involved in a motor vehicle accident shall render to any person injured in such accident reasonable assistance[, including the carrying or the making of arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment, if it is apparent that such treatment is necessary or if such carrying is requested by the injured person].]

**Committee Note**

625 ILCS 5/11-403 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 11-403 (1991)).

Give this instruction when a defendant is charged with leaving the scene of an accident and the duty to give information or render aid is at issue.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for court and counsel and should be in the instruction submitted to the jury.

### 23.12 Definition Of Personal Injury—Offense Of Leaving The Scene Of An Accident

The term “personal injury” means any injury requiring immediate professional treatment in a medical facility or doctor’s office.

#### Committee Note

625 ILCS 5/11-401 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 11-401 (1991)).

Give this instruction when a defendant is charged with leaving the scene of an accident involving death or personal injury, or with aggravated leaving the scene of an accident involving death or personal injury, and there is an issue of fact as to whether the accident involved personal injury within the meaning of Section 11-401. This instruction is not intended to define the term “personal injury” for any other purpose.



### 23.13 Definition Of Driving Under The Influence Of Alcohol

A person commits the offense of driving under the influence of alcohol when he [(drives) (is in actual physical control of)] a vehicle while under the influence of alcohol.

#### Committee Note

625 ILCS 5/11-501(a)(2) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-501(a)(2) (1991)).

Give Instruction 23.14.

Give Instruction 23.29, defining the term “under the influence of alcohol”.

When actual physical control is an issue, give Instruction 23.43.

Section 11-501(a) on its face appears to establish a single offense of driving under the influence, which could be proven by evidence showing consumption of alcohol, drugs, or both. The appellate court, however, has stated that subsections (a)(1) through (a)(4) create the four separate offenses of driving under the influence of alcohol, driving under the influence of drugs, driving under the combined influence of alcohol and drugs, and driving with an alcohol concentration of 0.10 percent or more. *People v. Bitterman*, 142 Ill.App.3d 1062, 97 Ill.Dec. 146, 492 N.E.2d 582 (1st Dist.1986). See also *People v. Ziltz*, 98 Ill.2d 38, 74 Ill.Dec. 40, 455 N.E.2d 70 (1983); *People v. Jacquith*, 129 Ill.App.3d 107, 84 Ill.Dec. 357, 472 N.E.2d 107 (1st Dist.1984); *People v. Utt*, 122 Ill.App.3d 272, 77 Ill.Dec. 840, 461 N.E.2d 463 (3d Dist.1983). Subsection (a)(5), added by P.A. 89-1019, effective July 1, 1990, creates a fifth offense of driving with any amount of a drug, substance, or compound in blood or urine which resulted from the unlawful use or consumption of cannabis or a controlled substance. Accordingly, these instructions define five separate offenses based on Section 11-501(a).

In *Ziltz*, the supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43, 455 N.E.2d at 72, 74 Ill.Dec. at 42. The Committee believes that this holding extends to the offense of driving under the influence of alcohol under Section 11-501(a)(2) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the influence of alcohol is increased from a Class A misdemeanor to a Class 4 felony (recodified as “aggravated driving under the influence” effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant’s second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use instruction 23.25 (school bus) or Instruction 23.27 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.49 (school bus) or Instruction 23.51 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See *People v. Bowman*, 221 Ill.App.3d 663, 666, 164 Ill.Dec. 560, 562, 583 N.E.2d 114, 116 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

### 23.14 Issues In Driving Under The Influence Of Alcohol

To sustain the charge of driving under the influence of alcohol, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of alcohol.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(2) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-501(a)(2) (1991)).

Give Instruction 23.13.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of driving under the influence of alcohol under Section 11-501(a)(2) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the influence of alcohol is increased from a Class A misdemeanor to a Class 4 felony (recodified as “aggravated driving under the influence” effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant’s second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.26 (school bus) or Instruction 23.28 (accident) if the offense was committed before January 1, 1992. Use the instructions for “aggravated driving under the influence”, Instruction 23.50 (school bus) or Instruction 23.52 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West



1992) (formerly Ill.Rev.Stat. ch. 38, § 111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See *People v. Bowman*, 221 Ill.App.3d 663, 666, 164 Ill.Dec. 560, 562, 583 N.E.2d 114, 116 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.



### 23.15 Definition Of Driving Under The Influence Of Drugs

A person commits the offense of driving under the influence of drugs when he [(drives) (is in actual physical control of)] a vehicle while under the influence of any drug or combinations of drugs to a degree which renders such person incapable of safely driving.

#### Committee Note

625 ILCS 5/11-501(a)(3) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-501(a)(3) (1991)).

Give Instruction 23.16.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of driving under the influence of drugs under Section 11-501(a)(3) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983).

Section 11-501(d) provides that the offense of driving under the influence of drugs is increased from a Class A misdemeanor to a Class 4 felony (recodified as “aggravated driving under the influence” effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant’s second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.25 (school bus) or Instruction 23.27 (accident) if the offense was committed before January 1, 1992. Use the instructions for “aggravated driving under the influence”, Instruction 23.53 (school bus) or Instruction 23.55 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See *People v. Bowman*, 221 Ill.App.3d 663, 666, 164 Ill.Dec. 560, 562, 583 N.E.2d 114, 116 (4th Dist.1991). For an instruction based upon the enhancing

factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of drugs.

Use applicable bracketed material.

### 23.16 Issues In Driving Under The Influence Of Drugs

To sustain the charge of driving under the influence of drugs, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(3) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-501(a)(3) (1991)).

Give Instruction 23.15.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of driving under the influence of drugs under Section 11-501(a)(3) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983).

Section 11-501(d) provides that the offense of driving under the influence of drugs is increased from a Class A misdemeanor to a Class 4 felony (recodified as “aggravated driving under the influence” effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant’s second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.26 (school bus) or Instruction 23.28 (accident) if the offense was committed before January 1, 1992. Use the instructions for “aggravated driving under the influence”, Instruction 23.54 (school bus) or Instruction 23.56 (accident), if the offense was committed on or after January 1, 1992.



Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See *People v. Bowman*, 221 Ill.App.3d 663, 666, 164 Ill.Dec. 560, 562, 583 N.E.2d 114, 116 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



### 23.17 Definition Of Driving Under The Combined Influence Of Alcohol And Drugs

A person commits the offense of driving under the combined influence of alcohol and drugs when he [(drives) (is in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs to a degree which renders such person incapable of safely driving.

#### Committee Note

625 ILCS 5/11-501(a)(4) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-501(a)(4) (1991)).

Give Instruction 23.18.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of driving under the combined influence of alcohol and drugs under Section 11-501(a)(4) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the combined influence of alcohol and drugs is increased from a Class A misdemeanor to a Class 4 felony (recodified as “aggravated driving under the influence” effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant’s second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.25 (school bus) or Instruction 23.27 (accident) if the offense was committed before January 1, 1992. Use the instructions for “aggravated driving under the influence”, Instruction 23.57 (school bus) or Instruction 23.59 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections

11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See *People v. Bowman*, 221 Ill.App.3d 663, 666, 164 Ill.Dec. 560, 562, 583 N.E.2d 114, 116 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Bitterman*, 142 Ill.App.3d 1062, 97 Ill.Dec. 146, 492 N.E.2d 582 (1st Dist.1986), on what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of a combination of alcohol and drugs.

Use applicable bracketed material.

**23.18 Issues In Driving Under The Combined Influence Of Alcohol And Drugs**

To sustain the charge of driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the combined influence of alcohol and any drug or drugs to a degree which rendered the defendant incapable of safely driving.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(4) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-501(a)(4) (1991)).

Give Instruction 23.17.

In *People v. Tiltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of driving under the combined influence of alcohol and drugs under Section 11-501(a)(4) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the combined influence of alcohol and drugs is increased from a Class A misdemeanor to a Class 4 felony (recodified as “aggravated driving under the influence” effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant’s second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.26 (school bus) or Instruction 23.28 (accident) if the offense was committed before January 1, 1992. Use the instructions for



“aggravated driving under the influence”, Instruction 23.58 (school bus) or Instruction 23.60 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See *People v. Bowman*, 221 Ill.App.3d 663, 666, 164 Ill.Dec. 560, 562, 583 N.E.2d 114, 116 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



**23.19 Definition Of Driving With An Alcohol Concentration Of 0.08 Or More**

A person commits the offense of driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] a vehicle while the alcohol concentration in such person's blood or breath is 0.08 or more.

**Committee Note**

625 ILCS 5/11-501(a)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-501(a)(1) (1991)).

Give Instruction 23.20.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See *People v. Ziltz*, 98 Ill.2d 38, 74 Ill.Dec. 40, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42-43, 455 N.E.2d at 72, 74 Ill.Dec. at 42. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the influence of alcohol is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.25 (school bus) or Instruction 23.27 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.45 (school bus) or Instruction 23.47 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See *People v. Bowman*, 221 Ill.App.3d 663, 666, 164 Ill.Dec. 560, 562, 583 N.E.2d 114, 116 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See Instruction 23.30A, defining the term “alcohol concentration”.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the alcohol concentration in the defendant’s blood or breath was 0.10 or more.

Use applicable bracketed material.

**23.20 Issues In Driving With An Alcohol Concentration Of 0.08 Or More**

To sustain the charge of driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the alcohol concentration in the defendant's blood or breath was 0.08 or more.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-501(a)(1) (1991)).

Give Instruction 23.19.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See *People v. Ziltz*, 98 Ill.2d 38, 74 Ill.Dec. 40, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42-43, 455 N.E.2d at 72, 74 Ill.Dec. at 42. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

Section 11-501(d) provides that the offense of driving under the influence of alcohol is increased from a Class A misdemeanor to a Class 4 felony (recodified as "aggravated driving under the influence" effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant's second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.26 (school bus) or Instruction 23.28 (accident) if the offense was committed before January 1, 1992. Use the instructions for "aggravated driving under the influence", Instruction 23.46 (school bus) or Instruction 23.48 (accident), if the offense was committed on or after January 1, 1992.



Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See *People v. Bowman*, 221 Ill.App.3d 663, 666, 164 Ill.Dec. 560, 562, 583 N.E.2d 114, 116 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See Instruction 23.30A, defining the term "alcohol concentration".

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.



## 23.21 Definition Of Driving With A Drug, Substance, Or Compound In Blood Or Urine

A person commits the offense of driving with a drug, substance, or compound in blood or urine when he [(drives) (is in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance)].

### Committee Note

625 ILCS 5/11-501(a)(5) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-501(a)(5) (1991)), added by P.A. 86-1019, effective July 1, 1990.

Give Instruction 23.22.

When actual physical control is an issue, give Instruction 23.43.

Section 11-501(a)(5) does not include actual impairment of the ability to drive as an element of the offense.

In *People v. Gassman*, 251 Ill.App.3d 681, 692–93, 190 Ill.Dec. 815, 823–24, 622 N.E.2d 845, 853–54 (2d Dist.1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman*, 251 Ill.App.3d at 688–89, 622 N.E.2d at 851, 190 Ill.Dec. at 821.

Section 11-501(d) provides that the offense of driving with a drug, substance, or compound in blood or urine is increased from a Class A misdemeanor to a Class 4 felony (recodified as “aggravated driving under the influence” effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant’s second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.25 (school bus) or Instruction 23.27 (accident) if the offense was committed before January 1, 1992. Use the instructions for “aggravated driving under the influence”, Instruction 23.61 (school bus) or Instruction 23.63 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See *People v. Bowman*, 221 Ill.App.3d 663, 666, 164 Ill.Dec. 560, 562,

583 N.E.2d 114, 116 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

### 23.22 Issues In Driving With A Drug, Substance, Or Compound In Blood Or Urine

To sustain the charge of driving with a drug, substance, or compound in blood or urine, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, there was any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (\_\_\_\_\_, a controlled substance)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(5) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-501(a)(5) (1991)), added by P.A. 86-1019, effective July 1, 1990.

Give Instruction 23.21.

In *People v. Gassman*, 251 Ill.App.3d 681, 692–93, 190 Ill.Dec. 815, 823-24, 622 N.E.2d 845, 853–54 (2d Dist.1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman*, 251 Ill.App.3d at 688–89, 622 N.E.2d at 851, 190 Ill.Dec. at 821.

Section 11-501(d) provides that the offense of driving with a drug, substance, or compound in blood or urine is increased from a Class A misdemeanor to a Class 4 felony (recodified as “aggravated driving under the influence” effective January 1, 1992; see P.A. 87-274) when it: (1) constitutes the third or subsequent violation of Section 11-501(a); (2) is committed by a person while driving an occupied school bus; (3) results in an accident causing great bodily harm, permanent disability, or disfigurement to another; or (4) constitutes the defendant’s second violation of Section 11-501(a) and the defendant has also been convicted of reckless homicide under 720 ILCS 5/9-3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 9-3 (1991)) based upon being under the influence of alcohol or drugs (Section 11-501(d)(4), added by P.A. 87-1198, effective September 25, 1992).

When enhancing factors found in Sections 11-501(d)(2) and (d)(3) as set forth above are at issue, use Instruction 23.26 (school bus) or Instruction 23.28 (accident) if the offense was committed before January 1, 1992. Use the instructions for “aggravated driving under the influence”, Instruction 23.62 (school bus) or Instruction 23.64 (accident), if the offense was committed on or after January 1, 1992.

Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 111-3(c) (1991))), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction used to enhance a sentence is not an element of an offense and may not be disclosed to the jury unless otherwise permitted by the issues. Thus, the enhancing factors found in Sections 11-501(d)(1) and (d)(4) as set forth above are matters solely for the trial court to consider when imposing sentence and consequently not included in the instructions to the jury. See *People v. Bowman*, 221 Ill.App.3d 663, 666, 164 Ill.Dec. 560, 562, 583 N.E.2d 114, 116 (4th Dist.1991). For an instruction based upon the enhancing factor in Section 11-501(d)(1) prior to July 1, 1990, see Instruction 23.23.

Insert in the blank the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.



**23.23–23.24 Reserved**

These sections have been reserved. Please refer to the Table of Contents for your subject.

### 23.25 Definition Of Driving Under The Influence—Felony—Driving An Occupied School Bus As Enhancing Factor

A person commits the offense of [(driving under the influence of alcohol) (driving under the influence of drugs) (driving under the combined influence of alcohol and drugs) (driving with an alcohol concentration of 0.08 or more) (driving with a drug, substance, or compound in blood or urine)] while driving an occupied school bus when he [(drives) (is in actual physical control of)] a school bus with children on board while [(under the influence of alcohol) (under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving) (under the combined influence of alcohol and any drug or drugs to a degree which renders him incapable of safely driving) (the alcohol concentration in his blood or breath is 0.08 or more) (there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance)])].

#### Committee Note

625 ILCS 5/11-501(d)(2) (West, 1999) (formerly Ill.Rev. Stat. ch. 951/2, § 11-501(d)(2) (1991)), amended by P.A. 85-303, effective January 1, 1988.

Give Instruction 23.26.

When appropriate, give the following instructions: Instruction 23.29, defining the phrase “under the influence of alcohol”; Instruction 23.43, defining the phrase “actual physical control”; and Instruction 23.30A, defining the term “alcohol concentration.”

Section 11-501(d)(2), effective January 1, 1988, provides that a violation of Section 11-501(a) is increased from a Class A misdemeanor to a Class 4 felony when committed while driving a school bus with children on board.

Use applicable bracketed material.

**23.26 Issues In Driving Under The Influence—Felony—Driving An Occupied School Bus As Enhancing Factor**

To sustain the charge of [(driving under the influence of alcohol) (driving under the influence of drugs) (driving under the combined influence of alcohol and drugs) (driving with an alcohol concentration of 0.08 or more) (driving with a drug, substance, or compound in blood or urine)] while driving an occupied school bus, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a school bus; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a school bus, the school bus had children on board; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] the school bus, the defendant [(was under the influence of alcohol) (was under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving) (was under the combined influence of alcohol and any drug or drugs to a degree which rendered him incapable of safely driving) (had an alcohol concentration in his blood or breath of 0.08 or more) (had any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (\_\_\_\_\_, a controlled substance)])].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(d)(2) (West, 1999) (formerly Ill.Rev. Stat. ch. 951/2, § 11-501(d)(2) (1991)), amended by P.A. 85-303, effective January 1, 1988.

For the definition of alcohol concentration see Instruction 23.30A.

Give Instruction 23.25.

Insert in the blank the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



## 23.27 Definition Of Driving Under The Influence—Felony—Accident As Enhancing Factor

A person commits the offense of [(driving under the influence of alcohol) (driving under the influence of drugs) (driving under the combined influence of alcohol and drugs) (driving with an alcohol concentration of 0.08 or more) (driving with a drug, substance, or compound in blood or urine)] involving a motor vehicle accident when he [(drives) (is in actual physical control of)] a vehicle while [(under the influence of alcohol) (under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving) (under the combined influence of alcohol and any drug or drugs to a degree which renders him incapable of safely driving) (the alcohol concentration in his blood or breath is 0.08 or more) (there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance)])] and is involved in a motor vehicle accident resulting in [(great bodily harm) (permanent disability) (permanent disfigurement)] to another and his act of [(driving) (being in actual physical control of)] a vehicle while [(under the influence of alcohol) (under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving) (under the combined influence of alcohol and any drug or drugs to a degree which renders him incapable of safely driving) (the alcohol concentration in his blood or breath is 0.08 or more) (there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance)])] is the proximate cause of the [(great bodily harm) (permanent disability) (permanent disfigurement)].

### Committee Note

625 ILCS 5/11-501(d)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 11-501(d)(3) (1991)), amended by P.A. 85-303, effective January 1, 1988.

Give Instruction 24.28.

When appropriate, give the following instructions: Instruction 23.29, defining the phrase “under the influence of alcohol”; Instruction 23.43, defining the phrase “actual physical control”; and Instruction 23.30A, defining the term “alcohol concentration.”

This instruction is a slightly modified version of the instruction approved in *People v. Haas*, 203 Ill.App.3d 779, 148 Ill.Dec. 667, 560 N.E.2d 1365 (5th Dist.1990).

Section 11-501(d)(3), effective January 1, 1988, provides that a violation of Section 11-501(a) is increased from a Class A misdemeanor to a Class 4 felony when the defendant’s conduct causes an accident resulting in great bodily harm or permanent disability or disfigurement to another.

Use applicable bracketed material.



**23.28 Issues In Driving Under The Influence—Felony—Accident As Enhancing Factor**

To sustain the charge of [(driving under the influence of alcohol) (driving under the influence of drugs) (driving under the combined influence of alcohol and drugs) (driving with an alcohol concentration of 0.08 or more) (driving with a drug, substance, or compound in blood or urine)] involving a motor vehicle accident, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] the vehicle, the defendant [(was under the influence of alcohol) (was under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving) (was under the combined influence of alcohol and any drug or drugs to a degree which rendered him incapable of safely driving) (had an alcohol concentration in his blood or breath of 0.08 or more) (had any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (, a controlled substance)])]; and

*Third Proposition:* That the defendant was involved in a motor vehicle accident; and

*Fourth Proposition:* That the motor vehicle accident resulted in [(great bodily harm) (permanent disability) (permanent disfigurement)] to another; and

*Fifth Proposition:* That the defendant's act of [(driving) (being in actual physical control of)] a vehicle while [(under the influence of alcohol) (under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving) (under the combined influence of alcohol and any drug or drugs to a degree which rendered him incapable of safely driving) (the alcohol concentration in his blood or breath was 0.08 or more) (there was any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (\_\_\_\_\_, a controlled substance)])] was the proximate cause of the [(great bodily harm) (permanent disability) (permanent disfigurement)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(d)(3) (West, 1999) (formerly Ill.Rev. Stat. ch. 951/2, § 11-501(d)(3) (1991)), amended by P.A. 85-303, effective January 1, 1988.

For the definition of alcohol concentration see Instruction 23.30A.

Give Instruction 23.27.

See Committee Note to Instruction 23.28A on the question of whether a definition of the term “proximate cause” should be submitted to the jury.

Insert in the blanks the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### **23.28A Definition Of Proximate Cause In Aggravated Driving Under The Influence-Accident And Injury As Enhancing Factor**

The term “proximate cause” means any cause which, in the natural or probable sequence, produced the [(bodily harm) (great bodily harm) (permanent disability) (permanent disfigurement) (death of another person)]. [It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause which in combination with it, causes the [(bodily harm) (great bodily harm) (permanent disability) (permanent disfigurement) (death of another person)]].

#### **Committee Note**

Section 11-501(d)(1)(3) (625 ILCS 5/11-501(d)(3) (West 1992)), effective January 1, 1988, enhances a violation of section 11-501(a) from a Class A misdemeanor to a Class 4 felony when the violation is the proximate cause of great bodily harm, permanent disability, or disfigurement to another. By Public Act 88-680, effective January 1, 1995, section 11-501(d)(3) was renumbered as section 11-501(d)(1)(C) (625 ILCS 5/11-501(d)(1)(C)).

In *People v. Martin*, 266 Ill.App.3d 369, 378–79, 640 N.E.2d 638 (4th Dist. 1994), the court held that an instruction very similar to this instruction was properly given when a DUI is subject to enhancement pursuant to section 11-501(d)(3). The Committee based this instruction upon IPI Civil Instruction 15.01 (definition of proximate cause), but modified it for use in this context.

The first part of this instruction should be given where the evidence shows that the sole cause of the injury or death was the conduct of the defendant. The instruction in its entirety, however, should be given when there is evidence of a concurring or contributing cause of the injury or death.

Section 11-501(d)(1)(C)(E) and (F) (635 ILCS 5/11-501(d)(1)(C)(E) and (F)) use the wording “a proximate cause.” Section 11-501(d)(1)(J) (635 ILCS 5/11-501(d)(1)(J)) uses the wording “the proximate cause.” The Committee believes that there is no significance to the variation in the phraseology that affects the applicability of this definition with one possible exception. When using 635 ILCS 5/11-501(d)(1)(J) (the proximate cause) the Committee directs the user to *Sibenaller v. Milschewski*, 379 Ill. App. 3d 717, 721–22 (2nd Dist. 2008), where the appellate court discusses a principle of statutory construction when “the” is used instead of “a.” The Committee takes no position as to whether the bracketed second sentence should be given when defining “the proximate cause.”

The aggravating factor of an accident resulting in great bodily harm, permanent disability, or disfigurement has been part of section 11-501 since 1986. However, the legislature redefined the offense as “aggravated” effective January 1, 1992. Thus, this instruction applies to aggravated DUI prosecutions based upon acts occurring on or after January 1, 1992, and felony DUI prosecutions based upon acts occurring before January 1, 1992.

This instruction should not be given when causation is an issue in intentional, knowing, or reckless homicide cases. Instruction 7.15 should be given under those circumstances.

This instruction should not be given when causation is an issue in felony murder cases. Instruction 7.15A should be given under those circumstances.

For the definition of "proximate cause" in all other cases see Instruction 4.24.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.



**23.29 Definition Of Under The Influence Of Alcohol**

A person is under the influence of alcohol when, as a result of drinking any amount of alcohol, his mental or physical faculties are so impaired as to reduce his ability to think and act with ordinary care.

**Committee Note**

See *People v. Schneider*, 362 Ill. 478, 200 N.E. 321 (1936); *Mills v. Edgar*, 178 Ill.App.3d 1054, 128 Ill.Dec. 167, 534 N.E.2d 187 (4th Dist.1989); *People v. Frazier*, 123 Ill.App.3d 563, 79 Ill.Dec. 27, 463 N.E.2d 165 (4th Dist.1984); *Shore v. Turman*, 63 Ill.App.2d 315, 210 N.E.2d 232 (4th Dist.1965).

### 23.30 Presumptions On Being Under The Influence Of Alcohol

If you find that at the time the defendant [(drove) (was in actual physical control of)] a vehicle that the alcohol concentration in the defendant's blood or breath was 0.05 or less, you shall presume that the defendant was not under the influence of alcohol.

If you find that at the time the defendant [(drove) (was in actual physical control of)] a vehicle that the alcohol concentration in the defendant's blood or breath was more than 0.05 but less than 0.08, this does not give rise to any presumption that the defendant was or was not under the influence of alcohol. You should consider all of the evidence in determining whether the defendant was under the influence of alcohol.

If you find [beyond a reasonable doubt] that at the time the defendant [(drove) (was in actual physical control of)] a vehicle that the amount of alcohol concentration in the defendant's blood or breath was 0.08 or more, you may presume that the defendant was under the influence of alcohol. You never are required to make this presumption. It is for the jury to determine whether the presumption should be drawn. You should consider all of the evidence in determining whether the defendant was under the influence of alcohol. [This presumption, however, has no application to the offense of driving with an alcohol concentration of 0.08 or more. Therefore, you should not consider this presumption in your deliberations on the offense of driving with an alcohol concentration of 0.08 or more.]

#### Committee Note

625 ILCS 5/11-501.2(b) (West, 1999) (formerly Ill.Rev. Stat. ch. 95 1/2, § 11-501.2(b) (1991)).

When actual physical control is an issue, give Instruction 23.43.

See *People v. Hester*, 131 Ill.2d 91, 136 Ill.Dec. 111, 544 N.E.2d 797 (1989).

The term "alcohol concentration" is defined in Instruction 23.30A. See Committee Note to Instruction 23.30A.

These presumptions do not apply to prosecutions for driving with an alcohol concentration of 0.08 or more. *People v. Ziltz*, 98 Ill.2d 38, 74 Ill.Dec. 40, 455 N.E.2d 70 (1983); 625 ILCS 5/11-501(a)(1). Therefore, the bracketed portion at the end of the third paragraph of this instruction should be given only when that offense is charged along with an offense to which the instruction is applicable.

With the exception of the second bracketed portion of the third paragraph, the entire instruction should be given when any part of it is given. For constitutional reasons, a presumption in a criminal case may not be mandatory when it operates against a defendant, and it may not shift the burden of proof. The Committee considered and rejected a proposal to add at the end of the first paragraph the sentence: "You should consider all of the evidence in determining whether the defendant was under the influence of alcohol."

The Committee has extensively discussed the presumption which is explained to the jury in this instruction. The discussions have focused on *People v. Hester*, 178 Ill.App.3d 360, 127 Ill.Dec. 335, 532 N.E.2d 1344 (1st Dist.1988), rev'd 131 Ill.2d 91, 136 Ill.Dec. 111, 544 N.E.2d 797 (1989). The appellate court held that the jury

instruction denied defendant due process of law because (1) the instruction given to the jury in that case, a modified IPI instruction, contained a mandatory presumption and the jury was not instructed to find beyond a reasonable doubt that defendant's blood alcohol level was 0.08 or more before it could rely on the presumption, and (2) the trial court's substitution of the word "may" for "shall" was tantamount to judicial legislation. See Hester, 131 Ill.2d at 97-98, 544 N.E.2d at 800-01, 136 Ill.Dec. at 114-15. The Illinois Supreme Court reversed, finding (1) the instruction was in fact permissive, and (2) the instructions given to the jury, taken as a whole, correctly instructed the jury as to the State's burden of proof. Hester, 131 Ill.2d at 101-02, 544 N.E.2d at 802, 136 Ill.Dec. at 116.

Despite extensive discussion, the Committee was unable to reach a final consensus before publication of the Third Edition on whether the predicate fact had to be proved beyond a reasonable doubt. While the appellate court opinion found error when the jury was not so instructed, the Supreme Court did not reach this issue. Therefore, it was decided to place the phrase "beyond a reasonable doubt" in brackets in the third paragraph of this instruction and to inform users of the problems in this area.

Use applicable bracketed material.

**23.30A Definition Of Alcohol Concentration**

The term "alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. [Alcohol concentration may be determined by analysis of a person's breath, blood, urine, or other bodily substance.]

**Committee Note**

625 ILCS 5/11-501.2 (West 1998).

This instruction should be given when scientific testimony or other evidence raises an issue concerning the grams of alcohol per milliliters of the defendant's blood or the grams of alcohol per liter of the defendant's breath and the instruction would be of aid to the jury.

Note that the Illinois Vehicle Code defines "alcohol concentration" in terms of whole blood, not blood serum. *People v. Green*, 294 Ill.App.3d 139, 689 N.E.2d 385, 228 Ill.Dec. 513 (1997), 294 Ill.App.3d 139, 689 N.E.2d 385, 228 Ill.Dec. 513 (1997).

Use bracketed material when applicable.



**23.30B Prescription Not A Defense**

The fact that a person was legally entitled to use [(drugs) (alcohol) (any combination of drugs and alcohol)] is not a defense to a charge of [(driving under the influence of drugs) (driving under the influence of alcohol) (driving under the combined influence of alcohol and drugs) (driving with an alcohol concentration of 0.08 or more)].

**Committee Note**

625 ILCS 5/11-501(b) (West, 1999) (formerly Ill.Rev. Stat. ch. 951/2, § 11-501(b) (1991)).

For the definition of alcohol concentration see Instruction 23.30A.

The Committee believes that this instruction cannot be used when the charge is based upon Section 11-501(a)(5) which provides that a person cannot drive while there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use of cannabis or a controlled substance.

Use applicable bracketed material.

**23.31 Definition Of Reckless Driving**

A person commits the offense of reckless driving when he drives a vehicle with a wilful or wanton disregard for the safety of persons or property.

[or]

A person commits the offense of reckless driving when he drives a vehicle and knowingly uses an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne.

**Committee Note**

625 ILCS 5/11-503(a) (West 1999), amended by P.A. 93-682, effective January 1, 2005.

Give Instruction 23.32.

See Instruction 5.01, defining the word “wanton.”

See Instruction 5.01B, defining the word “wilful.”

The Committee has placed the word “knowingly” in this instruction before the phrase “uses an incline” rather than before the phrase “drives a vehicle” as set forth in 625 ILCS 5/11-503(a)(2). This change from the statutory language conforms with the legislature’s intent as reflected in the legislative history reported at the time the statute was amended.

Use applicable paragraph.

**23.31X Definition Of Aggravated Reckless Driving**

A person commits the offense of aggravated reckless driving when he drives a vehicle with a willful or wanton disregard for the safety of persons or property and causes [(great bodily harm) (permanent disability or disfigurement)] to another.

**Committee Note**

625 ILCS 5/11-503 (West 1994), amended by P.A. 88-679, effective July 1, 1995.

Give Instruction 23.32X.

See Instruction 5.01, defining the word “wanton.”

See Instruction 5.01B, defining the word “willful.”

Use applicable bracketed material.

### 23.32 Issue In Reckless Driving

To sustain the charge of reckless driving, the State must prove the following proposition:

That the defendant drove a vehicle with a wilful or wanton disregard for the safety of persons or property.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

To sustain the charge of reckless driving, the State must prove the following proposition:

That the defendant drove a vehicle and knowingly used an incline in a roadway to cause the vehicle to become airborne.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-503(a) (West 1999) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-503(a) (1991)), amended by P.A. 93-682, effective January 1, 2005.

Give Instruction 23.31.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in the proposition. See Instruction 5.03.

See Instruction 5.01, defining the word “wanton.”

See Instruction 5.01B, defining the word “wilful.”

The Committee has placed the word “knowingly” in this instruction before the phrase “uses an incline” rather than before the phrase “drives a vehicle” as set forth in 625 ILCS 5/11-503(a)(2). This change from the statutory language conforms with the legislature’s intent as reflected in the legislative history reported at the time the statute was amended.

Use applicable paragraphs.



**23.32X Issues In Aggravated Reckless Driving**

To sustain the charge of aggravated reckless driving, the State must prove the following propositions:

*First Proposition:* That the defendant drove a vehicle with a willful or wanton disregard for the safety of persons or property, and

*Second Proposition:* That in doing so, the defendant caused [(great bodily harm) (permanent disability or disfigurement)] to another.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-503 (West 1994), amended by P.A. 88-679, effective July 1, 1995.

Give Instruction 23.31X.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**23.33 Definition Of Drag Racing**

A person commits the offense of drag racing when, while operating a motor vehicle on a street or highway, he is

[1] one of two or more individuals competing or racing in a situation in which one of the motor vehicles is beside or to the rear of a motor vehicle operated by a competing driver, and one driver attempts to prevent the competing driver from passing or overtaking him either by acceleration or maneuver.

[or]

[2] competing in a race against time.

**Committee Note**

625 ILCS 5/11-504 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 11-504 (1991)).

Give Instruction 23.34.

See 625 ILCS 5/1-125, defining the word "highway." See 625 ILCS 5/1-201, defining the word "street."

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.34 Issues In Drag Racing**

To sustain the charge of drag racing, the State must prove the following propositions:

*First Proposition:* That the defendant operated a motor vehicle upon a street or highway; and

*Second Proposition:* That the defendant was one of two or more competing or racing drivers in a situation in which one of the motor vehicles was beside or to the rear of a motor vehicle operated by a competing driver and one driver attempted to prevent the competing driver from passing or overtaking him either by acceleration or maneuver.

[or]

*Second Proposition:* That the defendant competed in a race against time.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-504 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 11-504 (1991)).

Give Instruction 23.33.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 23.35 Definition Of Possession Of Stolen Or Converted Vehicle

A person commits the offense of possession of a stolen or converted vehicle when that person [(receives) (possesses) (conceals) (sells) (disposes of) (transfers)] [(a vehicle) (an essential part of a vehicle)] when not entitled to possession of the [(vehicle) (essential part of a vehicle)] and when knowing it to have been stolen or converted.

#### Committee Note

625 ILCS 5/4-103(a)(1) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 4-103(a)(1) (1991)).

Give Instructions 23.36 and 23.36A.

When the defendant is charged with possessing stolen vehicles or essential parts of vehicles, give Instructions 13.33G (Definition of Stolen Property) and 13.01 (Definition of Theft). Because stolen property is defined as “property over which control has been obtained by *theft*,” the definition of theft must accompany the definition of stolen property. (Emphasis added.) See *People v. Cozart*, 235 Ill.App.3d 1076, 176 Ill.Dec. 627, 601 N.E.2d 1325 (2d Dist.1992). Although the court in *People v. Bradley*, 192 Ill.App.3d 387, 139 Ill.Dec. 358, 548 N.E.2d 743 (1st Dist.1989), held that the word “stolen” implies the definition of theft and the intent to permanently deprive—and that the jury therefore *need not* be instructed on those terms—Bradley did not hold it impermissible or error to do so. Therefore, in part to comply with *Cozart*, the Committee decided that the instructions should include the definitions of stolen property and theft.

When the defendant is charged with possession of converted vehicles or converted essential parts of vehicles, give Instruction 23.35A, defining the term “converted” property.

When the defendant is charged with possession of the essential parts of a vehicle, give Instruction 23.35B, defining the term “essential parts”.

See Instructions 23.71 and 23.72 regarding the aggravated versions of this offense.

Use applicable bracketed material.



**23.35A Definition Of Converted**

Property has been “converted” if a person lawfully entitled to possession of that property has been wrongfully deprived of it.

**Committee Note**

In *People v. Washington*, 184 Ill.App.3d 703, 133 Ill.Dec. 148, 540 N.E.2d 1014 (2d Dist.1989), the court approved the use of a non-IPI instruction defining the term “converted property” on the basis that it was not substantially different than the definition set forth in this instruction. See also *Yardley v. Yardley*, 137 Ill.App.3d 747, 92 Ill.Dec. 142, 484 N.E.2d 873 (2d Dist.1985); *Bender v. Consolidated Mink Ranch, Inc.*, 110 Ill.App.3d 207, 65 Ill.Dec. 801, 441 N.E.2d 1315 (2d Dist.1982).

**23.35B Definition Of Essential Parts**

The term “essential parts” means all integral and body parts of a vehicle of a type required to be registered, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

“Essential parts” include the following: [(vehicle hulks) (vehicle shells) (vehicle chassis) (vehicle frames) (front end assemblies[, which may consist of the headlight, grill, fenders, and hood]) (front clip[, the front end assembly with cowl attached]) (rear clip[, which may consist of quarter panels, fenders, floor, and top]) (doors) (hatchbacks) (fenders) (cabs) (cab clips) (cowls) (hoods) (trunk lids) (deck lids) (T-tops) (sunroofs) (moon roofs) (astro roofs) (transmissions of vehicles of the second division) (seats) (aluminum wheels) (engines) (stereo radios) (cassette radios) (compact disc radios) (cassette/compact disc radios) (compact disc players and compact disc changers that are either installed in dash or trunk-mounted))] [and other similar parts].

**Committee Notes**

625 ILCS 5/1-118 (1992) (formerly Ill.Rev.Stat. ch. 951/2, § 1-118 (1991)), amended by P.A. 86-1209, effective January 1, 1991.

The statute defining the term “component part,” former Ill.Rev.Stat. Chapter 951/2, § 1-111.3, has been repealed by P.A. 83-1473, effective January 1, 1985.

Use applicable bracketed material.

**23.36 Issues In Possession Of Stolen Or Converted Vehicle**

To sustain the charge of possession of a stolen or converted vehicle, the State must prove the following propositions:

*First Proposition:* That the defendant [(received) (possessed) (concealed) (sold) (disposed of) (transferred)] [(a vehicle) (an essential part of a vehicle)]; and

*Second Proposition:* That the defendant was not entitled to possession of the [(vehicle) (essential part of a vehicle)]; and

*Third Proposition:* That the defendant knew that the [(vehicle) (essential part of a vehicle)] was stolen or converted.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/4-103(a)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 4-103(a)(1) (1991)).

Give Instruction 23.35.

When appropriate, give Instruction 23.35A, defining the word “converted.”

When a defendant is charged with possession of a stolen or converted vehicle and it is alleged, or the evidence shows, that he participated in the actual taking of the vehicle, it may be necessary to include the phrase “intent to permanently deprive” in the definition and issues instructions. See *People v. Cramer*, 85 Ill.2d 92, 51 Ill.Dec. 681, 421 N.E.2d 189 (1981); *People v. Washington*, 184 Ill.App.3d 703, 133 Ill.Dec. 148, 540 N.E.2d 1014 (2d Dist.1989). But see *People v. Bradley*, 192 Ill.App.3d 387, 139 Ill.Dec. 358, 548 N.E.2d 743 (1st Dist.1989), wherein it was held that the word “stolen” implies an intent to permanently deprive.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**23.36A Inference From Possession Of Stolen Or Converted Vehicle**

Under the law, you may infer that a person exercising exclusive unexplained possession over [(a stolen or converted vehicle) (an essential part of a stolen or converted vehicle)] has knowledge that such [(vehicle) (essential part)] is stolen or converted.

You never are required to make this inference. It is for the jury to determine whether the inference should be drawn. During your deliberations on your verdict you should consider all the evidence in the case.

[Exclusive possession of [(a stolen or converted vehicle) (an essential part of a stolen or converted vehicle)] may be reasonably explained by facts and circumstances in evidence. In considering whether such exclusive possession has been reasonably explained, you are reminded that, in the exercise of constitutional rights, the accused need not take the stand or produce evidence.]

**Committee Note**

625 ILCS 5/4-103(a)(1) (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 4-103(a)(1) (1991)).

This instruction may be given when the defendant is charged with possession of a stolen or converted vehicle and there is evidence that the defendant had exclusive unexplained possession over a vehicle or essential part of a vehicle.

However, under some circumstances, use of an inference in a criminal case may raise constitutional problems. The final paragraph of this instruction should be given only when requested by the defendant. The second sentence of the final paragraph may be omitted if the defendant has testified, and should be omitted if the defendant requests that it be omitted.

See Instruction 23.35A, defining the word “converted,” and Instruction 23.35B, defining the term “essential parts.”

Use applicable bracketed material.



**23.37 Definition Of Possession Of A Vehicle With An Altered Identification Number**

A person commits the offense of possession of a vehicle with an altered identification number when he [(buys) (receives) (possesses) (sells) (disposes of)] [(the vehicle) (an essential part of a vehicle)] with the intent to defraud or commit a crime and with knowledge that the identification number on [(the vehicle) (an essential part of the vehicle)] has been removed or falsified.

**Committee Note**

625 ILCS 5/4-103(a)(4) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 4-103(a)(4) (1991)).

Give Instructions 23.38.

The phrase “with the intent to defraud or commit a crime and” has been added to this instruction to comply with *People v. DePalma*, 256 Ill.App.3d 206, 211, 194 Ill.Dec. 594, 598, 627 N.E.2d 1236, 1240 (2d Dist.1994). In *DePalma*, the court held that the knowledge element for this felony offense means “criminal knowledge”, which the court defined as “knowledge with an intent to defraud or commit a crime.” Accordingly, the Committee added the above phrase to this instruction in order to convey this holding to the jury.

The instructions for this offense contained in the bound volume of IPI-Criminal Third Edition also applied to the misdemeanor offense under Section 4-102(a)(3) of the Vehicle Code (Ill.Rev.Stat. ch. 951/2, § 4-102(a)(3) (1989)). However, P.A. 86-1209, effective January 1, 1991, deleted this misdemeanor offense.

See Instruction 23.35B, defining the term “essential parts”.

Use applicable bracketed material.

**23.37A Definition Of Identification Number**

The term "identification number" means the numbers and letters on a vehicle or essential part, affixed by the manufacturer, the Illinois Secretary of State, or the Illinois Department of State Police, for the purpose of identifying the vehicle or essential part, or which is required to be affixed to the vehicle or part by federal or state law.

**Committee Note**

625 ILCS 5/1-129 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 1-129 (1991)), amended by P.A. 84-1302 and P.A. 84-1304, effective January 1, 1987.

**23.38 Issues In Possession Of A Vehicle With An Altered Identification Number**

To sustain the charge of possession of a vehicle with an altered identification number, the State must prove the following propositions:

*First Proposition:* That the defendant [(bought) (received) (possessed) (sold) (disposed of)] [(a vehicle) (an essential part of a vehicle)]; and

*Second Proposition:* That the manufacturer's identification number on [(the vehicle) (an essential part of the vehicle)] had been removed or falsified; and

*Third Proposition:* That the defendant, with the intent to defraud or commit a crime, had knowledge that the manufacturer's identification number had been removed or falsified.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/4-103(a)(4) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 4-103(a)(4) (1991)).

Give Instruction 23.37.

The Third Proposition has been revised to comply with *People v. DePalma*, 256 Ill.App.3d 206, 211, 194 Ill.Dec. 594, 598, 627 N.E.2d 1236, 1240 (2d Dist.1994). See the Committee Note to Instruction 23.37.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

**23.39 Definition Of Driving While Driver's License Is Suspended Or Revoked**

A person commits the offense of driving while driver's license is [(suspended) (revoked)] when he [(drives) (is in actual physical control of)] a motor vehicle on a highway [of this State] at a time when his [(driver's license) (driver's permit) (privilege to drive) (privilege to obtain a driver's license) (privilege to obtain a driver's permit)] is [(suspended) (revoked)] as provided by the Illinois Vehicle Code or the law of another state.

**Committee Note**

625 ILCS 5/6-303(a) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, § 6-303 (1991)).

Give Instruction 23.40.

When actual physical control is an issue, give Instruction 23.43.

The word "highway" is defined in 625 ILCS 5/1-126 (West 1994).

Use applicable bracketed material.



**23.40 Issues In Driving While Driver's License Is Suspended Or Revoked**

To sustain the charge of driving while driver's license is [(suspended) (revoked)], the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a motor vehicle on a highway [of this State]; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a motor vehicle, his [(driver's license) (driver's permit) (privilege to drive) (privilege to obtain a driver's license) (privilege to obtain a driver's permit)] was [(suspended) (revoked)] as provided by the Illinois Vehicle Code or the law of another state.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/6-303(a) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, § 6-303 (1991)), amended by P.A. 89156, effective January 1, 1995.

Give Instruction 23.39.

When actual physical control is an issue, give Instruction 23.43.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

### **23.41 Definition Of Subsequent Offense Of Driving While Driver's License Is Suspended Or Revoked**

See section 23.42.

**23.42 Issues In Subsequent Offense Of Driving While Driver's License Is Suspended Or Revoked**

*[These instructions have been deleted; see the Committee Note below.]*

**Committee Note**

625 ILCS 5/6-303(a) and (d) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 6-303(a) and (d) (1991)).

The Committee no longer believes that instructions on this offense are appropriate because of its reliance on a defendant's prior convictions. Section 111-3(c) of the Criminal Code of Procedure (725 ILCS 5/111-3(c) (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 111-3(c) (1991))) provides that a prior conviction used to enhance a sentence is not an element of the offense, should only be considered by the trial court imposing sentence, and should not be disclosed to the jury unless otherwise permitted by the issues. See *People v. Bowman*, 221 Ill.App.3d 663, 666, 164 Ill.Dec. 560, 562, 583 N.E.2d 114, 116 (4th Dist.1991). Accordingly, the Committee has deleted this set of instructions.

### 23.43 Definition Of Actual Physical Control

The phrase "actual physical control" means that the defendant was in the vehicle and in a position to exercise control over the vehicle by starting the engine and causing the vehicle to move.

#### Committee Note

See *People v. Barlow*, 163 Ill.App.3d 281, 114 Ill.Dec. 827, 516 N.E.2d 982 (5th Dist.1987); *People v. Heimann*, 142 Ill.App.3d 197, 96 Ill.Dec. 593, 491 N.E.2d 872 (3d Dist.1986).



**23.43A Definition Of Vehicle**

The word “vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a street or highway. [However, [(bicycles) (devices moved by human power) (devices used exclusively upon stationary rails or tracks) (snowmobiles)] are not included within the definition of the word “vehicle.”] [An animal or a conveyance drawn by an animal may be included within the definition of the word “vehicle.”]

**Committee Note**

625 ILCS 5/1-217 and 11-206 (West, 1999) (formerly Ill.Rev.Stat. ch. 951/2, § 1-217 and 11-206 (1991)).

Under 625 ILCS 5/11-1502, bicycle riders are under a duty to obey all applicable traffic laws. Nothing in this instruction is meant to imply that bicycle riders are exempt from such laws. When a person is charged with violating a traffic law while riding a bicycle, the word “bicycle” may be substituted for the word “vehicle” in the appropriate instructions.

The definition of the word “vehicle” is discussed in *People v. Borst*, 162 Ill.App.3d 830, 114 Ill.Dec. 699, 516 N.E.2d 854 (2d Dist.1987), which suggests that an automobile remains a vehicle until a junking certificate is issued for it.

Use applicable bracketed material.

**23.43B Definition Of Motor Vehicle**

The term “motor vehicle” means every vehicle which is [(self-propelled) (propelled by electric power obtained from overhead trolley wires, but not operated upon rails)] [except for [(vehicles moved solely by human power) (motorized wheelchairs) (low-speed electric bicycles) (low-speed gas bicycles)]]].

**Committee Note**

*Instruction and Committee Note Approved April 4, 2014.*

625 ILCS 5/1-146 (West 2013), amended by P.A. 96-125, § 5, effective January 1, 2010.

Use applicable bracketed material.

The last clause of this definition is bracketed because in most cases the exception contained within that clause will not be an issue.

### **23.45 Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus**

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he drives a school bus with children on board while the alcohol concentration in his blood or breath is 0.08 or more.

#### **Committee Note**

625 ILCS 5/11-501(a)(1) and (d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.46.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See *People v. Ziltz*, 98 Ill.2d 38, 74 Ill.Dec. 40, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43, 455 N.E.2d at 72, 74 Ill.Dec. at 42; *People v. Avery*, 277 Ill.App.3d 824, 214 Ill.Dec. 507, 661 N.E.2d 361 (1st Dist.1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

See Instruction 23.30A, defining the term “alcohol concentration”.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

### 23.46 Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

*First Proposition:* That the defendant drove a school bus; and

*Second Proposition:* That at the time defendant drove the school bus, children were on board; and

*Third Proposition:* That at the time the defendant drove the school bus, the alcohol concentration in the defendant's blood or breath was 0.08 or more.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(1) and (d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

For the definition of alcohol concentration see Instruction 23.30A.

Give Instruction 23.45.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. See also *People v. Avery*, 277 Ill.App.3d 824, 214 Ill.Dec. 507, 661 N.E.2d 361 (1st Dist.1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.



**23.47 Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Injuries**

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] a vehicle while the alcohol concentration in his blood or breath is 0.08 or more, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident which resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another, and his [(driving) (being in actual physical control of)] a vehicle while having an alcohol concentration in his blood or breath of 0.08 or more is the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

**Committee Note**

625 ILCS 5/11-501(a)(1) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(1) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.48.

Give Instruction 23.28A, defining the term “proximate cause.” In *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See *People v. Ziltz*, 98 Ill.2d 38, 74 Ill.Dec. 40, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43, 455 N.E.2d at 72, 74 Ill.Dec. at 42; *People v. Avery*, 277 Ill.App.3d 824, 214 Ill.Dec. 507, 661 N.E.2d 361 (1st Dist.1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.10 or more under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

See Instruction 23.30A, defining the term “alcohol concentration”.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

### 23.47A Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Death

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], and in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while the alcohol concentration in his blood or breath is 0.08 or more, he is involved in an accident which resulted in death to another, and his [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while the alcohol concentration in his blood or breath is 0.08 or more is a proximate cause of the death to the other person.

#### Committee Note

625 ILCS 5/11-501(a)(1) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-501(a)(1) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.48A.

Give Instruction 23.28A, defining the term “proximate cause.” In *People v. Martin*, 266 Ill. App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were a proximate cause of the great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See *People v. Ziltz*, 98 Ill.2d 38, 74 Ill.Dec. 40, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43, 455 N.E.2d at 72, 74 Ill.Dec. at 42; *People v. Avery*, 277 Ill.App.3d 824, 214 Ill.Dec. 507, 661 N.E.2d 361 (1st Dist. 1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist. 1979).

Give Instruction 23.30A, defining the term “alcohol concentration.”

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill. App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



### 23.48 Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Injuries

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

*Third Proposition:* That the defendant, in [(so driving) (being in the actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

*Fourth Proposition:* That the motor vehicle accident in which defendant was involved resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another person; and

*Fifth Proposition:* That the defendant's [(driving) (being in actual physical control of)] a vehicle while having an alcohol concentration in his blood or breath of 0.08 or more was the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(1) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(1) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

For the definition of alcohol concentration see Instruction 23.30A.

Give Instruction 23.47.

Give Instruction 23.28A, defining the term "proximate cause." In *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. See also *People v. Avery*, 277



Ill.App.3d 824, 214 Ill.Dec. 507, 661 N.E.2d 361 (1st Dist.1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 23.48A Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Death

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)]; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

*Third Proposition:* That the defendant, in [(so driving) (being in the actual physical control of)] [(a)(an)] [(motor vehicle)(snowmobile) (all terrain vehicle) (watercraft)], was involved in an accident; and

*Fourth Proposition:* That the accident in which defendant was involved resulted in death to another person; and

*Fifth Proposition:* That the defendant's [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while the alcohol concentration in his blood or breath is 0.08 or more was a proximate cause of the death to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(1) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-501(a)(1) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

For the definition of "alcohol concentration" give Instruction 23.30A.

Give Instruction 23.47A.

Give Instruction 23.28A, defining the term "proximate cause." In *People v. Martin*, 266 Ill. App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. See also *People v. Avery*, 277 Ill.

App.3d 824, 661 N.E.2d 361, 214 Ill.Dec. 507 (1st Dist. 1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill. App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist. 1979).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

### 23.49 Definition Of Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus

A person commits the offense of aggravated driving under the influence of alcohol when he drives a school bus with children on board while he is under the influence of alcohol.

#### Committee Note

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(2) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.50.

Give Instruction 23.29, defining the term “under the influence of alcohol.”

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.



**23.50 Issues In Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus**

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

*First Proposition:* That the defendant drove a school bus; and

*Second Proposition:* That at the time the defendant drove the school bus, children were on board; and

*Third Proposition:* That at the time the defendant drove the school bus, the defendant was under the influence of alcohol.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(2) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.49.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 23.51 Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Injuries

A person commits the offense of aggravated driving under the influence of alcohol when he [(drives) (is in actual physical control of)] a vehicle while under the influence of alcohol, and in [(so driving) (being in the actual physical control of)] a vehicle, he is involved in a motor vehicle accident which resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another, and his [(driving) (being in actual physical control of)] a vehicle while being under the influence of alcohol is the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

#### Committee Note

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(2) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.52.

Give Instruction 23.29, defining the term “under the influence of alcohol.”

Give Instruction 23.28A, defining the term “proximate cause.” In *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

**23.51A Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Death**

A person commits the offense of aggravated driving under the influence of alcohol when he [(drives) (is in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the influence of alcohol, and in [(so driving) (being in the actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], he is involved in an accident which resulted in death to another, and his [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while being under the influence of alcohol is a proximate cause of the death to the other person.

**Committee Note**

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-501(a)(2) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 93-213, effective July 18, 2003.

Give Instruction 23.52A.

Give Instruction 23.29, defining the term “under the influence of alcohol.”

Give Instruction 23.28A, defining the term “proximate cause.” In *People v. Martin*, 266 Ill. App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill. App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill. App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



## 23.52 Issues In Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Injuries

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of alcohol; and

*Third Proposition:* That the defendant, in [(so driving) (being in the actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

*Fourth Proposition:* That the motor vehicle accident in which defendant was involved resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another person; and

*Fifth Proposition:* That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the influence of alcohol was the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### Committee Note

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(2) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.51.

Give Instruction 23.28A, defining the term "proximate cause." In *People v. Martin*, 266 Ill.App.3d 369, 378-79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In *People v. Ziltz*, 98 Ill.2d 38, 42-43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).



Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 23.52A Issues In Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Death

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)]; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], the defendant was under the influence of alcohol; and

*Third Proposition:* That the defendant, in [(so driving) (being in the actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], was involved in an accident; and

*Fourth Proposition:* That the accident in which defendant was involved resulted in death to another person; and

*Fifth Proposition:* That the defendant's [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the influence of alcohol was a proximate cause of the death to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(2) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-501(a)(2) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.51A.

Give Instruction 23.28A, defining the term "proximate cause." In *People v. Martin*, 266 Ill. App.3d 369, 378-79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In *People v. Ziltz*, 98 Ill.2d 38, 42-43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill. App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist. 1979).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

### 23.53 Definition Of Aggravated Driving Under The Influence Of Drugs—Driving A School Bus

A person commits the offense of aggravated driving under the influence of drugs when he drives a school bus with children on board while he is under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving.

#### Committee Note

625 ILCS 5/11-501(a)(3) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(3) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.54.

In *People v. Gassman*, 251 Ill.App.3d 681, 688-89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42-43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of drugs.



### **23.54 Issues In Aggravated Driving Under The Influence Of Drugs—Driving A School Bus**

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

*First Proposition:* That the defendant drove a school bus; and

*Second Proposition:* That at the time the defendant drove the school bus, children were on board; and

*Third Proposition:* That at the time the defendant drove the school bus, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### **Committee Note**

625 ILCS 5/11-501(a)(3) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(3) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.53.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 23.55 Definition Of Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Injuries

A person commits the offense of aggravated driving under the influence of drugs when he [(drives) (is in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident which resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another, and his [(driving) (being in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving is the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

#### Committee Note

625 ILCS 5/11-501(a)(3) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(3) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in injuries has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.56.

Give Instruction 23.28A, defining the term “proximate cause.” In *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of drugs.

**23.55A Definition Of Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Death**

A person commits the offense of aggravated driving under the influence of drugs when he [(drives) (is in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile)(all terrain vehicle) (watercraft)] while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], he is involved in an accident which resulted in death to another, and his [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving is a proximate cause of the death to the other person.

**Committee Note**

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-501(a)(4) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.56A.

Give Instruction 23.28A, defining the term “proximate cause.” In *People v. Martin*, 266 Ill. App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

In *People v. Gassman*, 251 Ill. App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill. App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of drugs.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



### 23.56 Issues In Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Injuries

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

*Fourth Proposition:* That the motor vehicle accident in which defendant was involved resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another person; and

*Fifth Proposition:* That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving was the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(3) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(3) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.55.

Give Instruction 23.28A, defining the term "proximate cause." In *People v. Martin*, 266 Ill.App.3d 369, 378-79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In *People v. Gassman*, 251 Ill.App.3d 681, 688-89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(C) and accordingly has not



included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 23.56A Issues In Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Death

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)]; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], was involved in an accident; and

*Fourth Proposition:* That the accident in which defendant was involved resulted in death to another person; and

*Fifth Proposition:* That the defendant's [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving was a proximate cause of the death to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-501(a)(4) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.55A.

Give Instruction 23.28A defining the term “proximate cause.” In *People v. Martin*, 266 Ill. App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In *People v. Gassman*, 251 Ill. App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The

Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42-43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

### 23.57 Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving A School Bus

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he drives a school bus with children on board while such person is under the combined influence of alcohol and any other drug or drugs to a degree which renders such person incapable of safely driving.

#### Committee Note

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(4) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.58.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

See *People v. Bitterman*, 142 Ill.App.3d 1062, 97 Ill.Dec. 146, 492 N.E.2d 582 (1st Dist.1986), concerning what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of a combination of alcohol and drugs.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).



### **23.58 Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving A School Bus**

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

*First Proposition:* That the defendant drove a school bus; and

*Second Proposition:* That at the time the defendant drove the school bus, children were on board; and

*Third Proposition:* That at the time the defendant drove the school bus, the defendant was under the combined influence of alcohol and any drug or drugs to a degree which rendered the defendant incapable of safely driving.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### **Committee Note**

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(4) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.57.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 23.59 Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Injuries

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he [(drives) (is in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs to a degree which renders him incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident which resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another, and his [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs to a degree which renders such person incapable of safely driving is the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

#### Committee Note

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(4) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.60.

Give Instruction 23.28A, defining the term “proximate cause.” In *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

See *People v. Bitterman*, 142 Ill.App.3d 1062, 97 Ill.Dec. 146, 492 N.E.2d 582 (1st Dist.1986), concerning what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist.1971), regarding the time frame when it must be shown that the defendant was under the influence of a combination of alcohol and drugs.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.



**23.59A Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds—Accident Resulting In Death**

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs or intoxicating compound or compounds when he [(drives) (is in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders him incapable of safely driving, and in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile)(all terrain vehicle) (watercraft)], he is involved in an accident which resulted in death to another, and his [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving is a proximate cause of the death to the other person.

**Committee Note**

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-501(a)(5) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.60A.

Give Instruction 23.28A defining the term “proximate cause.” In *People v. Martin*, 266 Ill. App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in *People v. Gassman*, 251 Ill. App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill. App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist. 1979).

See *People v. Bitterman*, 142 Ill. App.3d 1062, 97 Ill.Dec. 146, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill. App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of a combination of alcohol and drugs.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



### **23.60 Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Injuries**

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the combined influence of alcohol and any drug or drugs to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

*Fourth Proposition:* That the motor vehicle accident in which defendant was involved resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another person; and

*Fifth Proposition:* That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any drug or drugs to a degree which rendered the defendant incapable of safely driving was the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### **Committee Note**

625 ILCS 5/11-501(a)(4) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(1) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.59.

Give Instruction 23.28A, defining the term "proximate cause." In *People v. Martin*, 266 Ill.App.3d 369, 378-79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In *People v. Ziltz*, 98 Ill.2d 38, 42-43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence of

alcohol under Section 11-501(a)(1) is a strict liability offense, and in *People v. Gassman*, 251 Ill.App.3d 681, 688-89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist.1979).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

**23.60A Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds—Accident Resulting In Death**

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, or intoxicating compound or compounds the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)]; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] the defendant was under the combined influence of alcohol and any drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], was involved in a motor vehicle accident; and

*Fourth Proposition:* That the accident in which defendant was involved resulted in death to another person; and

*Fifth Proposition:* That the defendant's [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while under the combined influence of alcohol and any drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving was a proximate cause of the death to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-501(a)(1) and 11-501(d)(3) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.59A.

Give Instruction 23.28A defining the term “proximate cause.” In *People v. Martin*, 266 Ill. App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were a proximate cause of great bodily harm, permanent



disability, or disfigurement pursuant to section 11-501(d)(3).

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 74 Ill.Dec. 40, 42, 455 N.E.2d 70, 72 (1983), the supreme court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in *People v. Gassman*, 251 Ill. App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill. App.3d 124, 31 Ill.Dec. 691, 394 N.E.2d 893 (2d Dist. 1979).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



**23.61 Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Driving A School Bus**

A person commits the offense of aggravated driving with a drug, substance, or compound in blood or urine when he drives a school bus with children on board while there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance)].

**Committee Note**

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(5) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.62.

When actual physical control is an issue, give Instruction 23.43.

Section 11-501(a)(5) does not include actual impairment of the ability to drive as an element of the offense.

In *People v. Gassman*, 251 Ill.App.3d 681, 692–93, 190 Ill.Dec. 815, 823-24, 622 N.E.2d 845, 853–54 (2d Dist.1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman*, 251 Ill.App.3d at 688–89, 622 N.E.2d at 851, 190 Ill.Dec. at 821. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in blood or urine under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

### 23.62 Issues In Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Driving A School Bus

To sustain the charge of aggravated driving with a drug, substance, or compound in blood or urine, the State must prove the following propositions:

*First Proposition:* That the defendant drove a school bus; and

*Second Proposition:* That at the time the defendant drove the school bus, children were on board; and

*Third Proposition:* That at the time the defendant drove the school bus, there was any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use of [(cannabis) (\_\_\_\_\_, a controlled substance)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(B) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(5) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.61.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in blood or urine under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction.

Insert in the blank the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### **23.63 Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Accident Resulting In Injuries**

A person commits the offense of aggravated driving with a drug, substance, or compound in blood or urine when he [(drives) (is in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use of [(cannabis) (a controlled substance)], and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident which resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another, and his [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs to a degree which renders such person incapable of safely driving is the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

#### **Committee Note**

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(5) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.64.

Give Instruction 23.28A, defining the term “proximate cause.” In *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

Section 11-501(a)(5) does not include actual impairment of the ability to drive as an element of the offense.

In *People v. Gassman*, 251 Ill.App.3d 681, 692–93, 190 Ill.Dec. 815, 823–24, 622 N.E.2d 845, 853–54 (2d Dist.1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman*, 251 Ill.App.3d at 688–89, 622 N.E.2d at 851, 190 Ill.Dec. at 821. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in blood or urine under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.



### 23.63A Definition Of Aggravated Driving With A Drug, Substance, Or Intoxicating Compound In Breath, Blood Or Urine—Accident Resulting In Death

A person commits the offense of aggravated driving with a drug, substance, or intoxicating compound in breath, blood, or urine when he [(drives) (is in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while there is any amount of a drug, substance, or intoxicating compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound)], and in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], he is involved in an accident which resulted in death to another, and his [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while there is any amount of a drug, substance or intoxicating compound in his breath, blood or urine is a proximate cause of the death to the other person.

#### Committee Note

625 ILCS 5/11-501(a)(6) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-501(a)(5) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 86-1475, effective January 1, 1992.

Give Instruction 23.64A.

Give Instruction 23.28A defining the term “proximate cause.” In *People v. Martin*, 266 Ill. App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

When actual physical control is an issue, give Instruction 23.43.

It may be necessary to give other instructions defining terms used in this instruction. See 720 ILCS 570/102(f) defining the term “controlled substance”; 720 ILCS 690/1 defining the term “intoxicating compound.”

In *People v. Gassman*, 251 Ill. App.3d 681, 692–93, 190 Ill.Dec. 815, 823–24, 622 N.E.2d 845, 853–54 (2d Dist. 1993), the court upheld the constitutionality of Section 11-501(a)(6). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(6) is a strict liability offense. *Gassman*, 251 Ill.App.3d at 688–89, 622 N.E.2d at 851, 190 Ill.Dec. at 821. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in blood or urine under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction.

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).



Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

### 23.64 Issues In Aggravated Driving With A Drug, Substance, Or Compound In Blood Or Urine—Accident Resulting In Injuries

To sustain the charge of aggravated driving with a drug, substance, or compound in blood or urine, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, there was any amount of a drug, substance, or compound in his blood or urine resulting from the unlawful use or consumption of [(cannabis) (\_\_\_\_\_, a controlled substance)]; and

*Third Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

*Fourth Proposition:* That the motor vehicle accident in which defendant was involved resulted in [(great bodily harm) (permanent disability) (disfigurement)] to another person; and

*Fifth Proposition:* That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any drug or drugs to a degree which rendered the defendant incapable of safely driving was the proximate cause of the [(great bodily harm) (permanent disability) (disfigurement)] to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(5) and 11-501(d)(1)(C) (West 1994) (formerly Ill.Rev.Stat. ch. 951/2, §§ 11-501(a)(5) and 11-501(d)(3) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.63.

Give Instruction 23.28A, defining the term “proximate cause.” In *People v. Martin*, 266 Ill.App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist.1994), the court held that the State must prove beyond a reasonable doubt that the defendant's acts were the proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist.1993), the court held that the offense of driving with a

drug, substance, or compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in blood or urine under Section 11-501(d)(1)(C) and accordingly has not included a mental state in this instruction.

Insert in the blank the name of the controlled substance.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 23.64A Issues In Aggravated Driving With A Drug, Substance, Or Intoxicating Compound In Breath, Blood Or Urine—Accident Resulting In Death

To sustain the charge of aggravated driving with a drug, substance, or intoxicating compound in breath, blood or urine, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)]; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], there was any amount of a drug, substance, or intoxicating compound in his breath, blood or urine resulting from the unlawful use or consumption of [(cannabis)(\_\_\_\_\_) , a controlled substance) (an intoxicating compound)]; and

*Third Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)], was involved in an accident; and

*Fourth Proposition:* That the accident in which defendant was involved resulted in death to another person; and

*Fifth Proposition.* That the defendant's [(driving) (being in actual physical control of)] [(a)(an)] [(motor vehicle) (snowmobile) (all terrain vehicle) (watercraft)] while there was any amount of a drug, substance, or intoxicating compound in his breath, blood, or urine was a proximate cause of the death to the other person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(6) and 11-501(d)(1)(F) (West 1994) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-501(a)(5) (1991)), amended by P.A. 93-1093, effective March 29, 2005. Although the aggravating factor of an accident resulting in great bodily harm, etc., has been part of Section 11-501 since 1986, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992.

Give Instruction 23.63A.

Give Instruction 23.28A defining the term “proximate cause.” In *People v. Martin*, 266 Ill. App.3d 369, 378–79, 203 Ill.Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994), the court held that the State must prove beyond a reasonable doubt that the defendant’s acts were a proximate cause of great bodily harm, permanent disability, or disfigurement pursuant to section 11-501(d)(3).

It may be necessary to give other instructions defining terms used in this instruction. See 720 ILCS 570/102(f) defining the term “controlled substances” or



720 ILCS 690/1 defining the term “intoxicating compound.”

In *People v. Gassman*, 251 Ill. App.3d 681, 688–89, 190 Ill.Dec. 815, 821, 622 N.E.2d 845, 851 (2d Dist. 1993), the court held that the offense of driving with a drug, substance, or intoxicating compound in breath, blood or urine under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or intoxicating compound in breath, blood or urine under Section 11-501(d)(1)(F) and accordingly has not included a mental state in this instruction.

Insert in the blank the name of the controlled substance.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

### 23.65 Definition Of Speeding

A person commits the offense of speeding when he drives a vehicle upon a highway

[1] at a speed which is greater than the applicable maximum speed limit.

[or]

[2] at a speed that is 40 miles per hour or more in excess of the applicable maximum speed limit.

[or]

[3] at a speed that is 30 miles per hour or more but less than 40 miles per hour in excess of the applicable maximum speed limit.

[or]

[4] at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway.

[or]

[5] at a speed which endangers the safety of any person or property.

[or]

[6] and fails to decrease his speed as may be necessary to avoid colliding with a [(person) (vehicle)] on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

#### Committee Note

625 ILCS 5/11-601(a) and (b) (West 2011) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-601 (a) and (b) (1991); 625 ILCS 5/11-601.5 (a) and (b) (West 2011), amended by P.A. 96-1002, effective January 1, 2011.

Give Instruction 23.66.

Select the paragraph that is consistent with the facts alleged in the charging instrument.

The offense defined in paragraph [4] is sometimes referred to as “driving too fast for conditions”. See *People v. Foster*, 176 Ill.App.3d 406, 411, 531 N.E.2d 93 (5th Dist. 1988).

The offense defined in paragraph [6] is sometimes referred to as “failure to reduce speed”. In *re Vitale*, 71 Ill.2d 229, 238, 375 N.E.2d 87 (1978), vacated and remanded on other grounds sub nom., *Illinois v. Vitale*, 447 U.S. 410, 100 S.Ct. 2260, 65 L.Ed.2d 228 (1980); or “failure to reduce speed to avoid an accident”, *People v. Smith*, 99 Ill.2d 467, 459 N.E.2d 1357 (1984).

For a definition of the terms “highway”, “traffic”, and “vehicle”, see 625 ILCS 5/1-126, 5/1-207, 5/1-217 (West 2010) (formerly Ill.Rev.Stat. ch. 95 1/2, §§ 1-126, 1-207, and 1-217 (1991), respectively.

Use applicable paragraphs and bracketed material.

The brackets and numbers are provided solely for the guidance of court and

counsel and should not be included in the instruction submitted to the jury.

**23.65A Definition Of Speeding While Passing School**

A person commits the offense of speeding while passing schools when he drives a motor vehicle at a speed in excess of 20 miles per hour while [(passing through a school zone) (traveling on a roadway on public school property) (upon any public thoroughfare where children pass going to and from school)] on a school day between the hours of 7 a.m. and 4 p.m. when school children are present and so close thereto that a potential hazard exists because of the close proximity of the motorized traffic and where appropriate signs have been posted and maintained upon streets and highways which give proper due warning that a school zone is being approached and which indicate the school zone and the maximum speed limit in effect during school days when school children are present.

“School” means a [(public or private primary or secondary school) (primary or secondary school operated by a religious institution) (public, private, or religious nursery school)].

**Committee Note**

625 ILCS 5/11-605 (West 2009) (formerly Ill.Rev.Stat. ch. 95 1/2 § 11-605 (1991)).

Give Instruction 23.66A.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.



**23.65B Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Bodily Harm To A Child Under The Age Of 16**

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] a vehicle while the alcohol concentration in his blood or breath is 0.08 or more, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while having an alcohol concentration in his blood or breath of 0.08 or more is the proximate cause of the bodily harm to the child under the age of 16.

**Committee Note**

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.66B.

Give Instruction 23.30A, defining “alcohol concentration”.

Give Instruction 23.28A, defining “proximate cause”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### **23.65C Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident While Driving In A School Speed Zone As Enhancing Factor**

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he drives a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect while the alcohol concentration in his blood or breath is 0.08 or more and he is involved in a motor vehicle accident that results in bodily harm to another person and his act of driving a vehicle while the alcohol concentration in his blood or breath is 0.08 or more is a proximate cause of the bodily harm.

#### **Committee Note**

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.66C.

Give Instruction 23.30A, defining “alcohol concentration”.

Give Instruction 4.23, defining “school speed zone”.

Give Instruction 23.28A, defining “proximate cause”.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. See *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The Illinois Supreme Court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43; *People v. Avery*, 277 Ill.App.3d 824, 830, 661 N.E.2d 361 (1st Dist. 1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E. 2d 893 (2d Dist. 1979).

Section 11-501(d)(1)(E), effective January 1, 2008, provides that a violation of Section 11-501(a) is increased from a Class A misdemeanor to a Class 4 felony when the defendant, while driving at any speed in a school speed zone at a time when the speed limit of 20 miles per hour was in effect is involved in a motor vehicle accident that resulted in bodily harm to another person and the violation of subsection (a) was a proximate cause of the bodily harm.

**23.65D Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving Without Liability Insurance**

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] a vehicle while the alcohol concentration in his blood or breath is 0.08 or more, and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

**Committee Note**

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.66D.

Give Instruction 23.30A, defining “alcohol concentration”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.65E Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Defendant Does Not Possess Drivers License**

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he [(drives) (is in actual physical control of)] a vehicle while the alcohol concentration in his blood or breath is 0.08 or more, and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

**Committee Note**

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.66E.

Give Instruction 23.30A, defining “alcohol concentration”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.65F Definition Of Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

A person commits the offense of aggravated driving with an alcohol concentration of 0.08 or more when he drives a school bus while the alcohol concentration in his blood or breath is 0.08 or more, and in so driving a school bus, there are persons 18 years of age or younger on board.

**Committee Note**

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed “children” to “persons 18 years of age or younger”.

Give Instruction 23.66F.

Give Instruction 23.30A, defining “alcohol concentration”.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

### 23.66 Issues In Speeding

To sustain the charge of speeding, the State must prove the following propositions:

*First Proposition:* That the defendant drove a vehicle upon a highway; and

*Second Proposition:* That when the defendant did so, he drove at a speed which was greater than the applicable maximum speed limit.

[or]

*Second Proposition:* That when the defendant did so, he drove at a speed that was 40 miles per hour or more in excess of the applicable maximum speed limit.

[or]

*Second Proposition:* That when the defendant did so, he drove at a speed that was 30 miles per hour or more but less than 40 miles per hour in excess of the applicable maximum speed limit.

[or]

*Second Proposition:* That when the defendant did so, he drove at a speed which was greater than is reasonable and proper with regard to traffic conditions and the use of the highway.

[or]

*Second Proposition:* That when the defendant did so, he drove at a speed which endangered the safety of any person or property.

[or]

*Second Proposition:* That when the defendant did so, he failed to decrease his speed as was necessary to avoid colliding with a [(person) (vehicle)] on or entering the highway in compliance with legal requirements and the duty of all persons to use due case.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-601(a) and (b) (West 2011) (formerly Ill.Rev.Stat. ch. 95 1/2, § 11-601 (a) and (b) (1991); 625 ILCS 5/11-601.5 (a) and (b) (West 2011), amended by P.A. 96-1002, effective January 1, 2011.

Give Instruction 23.65.

Select the Second Proposition that is consistent with the definitional instruction and charging instrument.

Use applicable bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.66A Issues In Speeding While Passing School**

To sustain the charge of speeding while passing a school, the State must prove the following propositions:

*First Proposition:* That the defendant drove a motor vehicle at a speed in excess of 20 miles per hour; and

*Second Proposition:* That at the time the defendant drove the motor vehicle he was [(passing through a school zone) (traveling on a roadway on public school property) (upon any public thoroughfare where children pass going to and from school)]; and

*Third Proposition:* That at the time the defendant drove the motor vehicle it was a school day between the hours of 7 a.m. and 4 p.m.; and

*Fourth Proposition:* That at the time the defendant drove the motor vehicle school children were present and so close thereto that a potential hazard existed because of the close proximity of the motorized traffic; and

*Fifth Proposition:* That at the time the defendant drove the motor vehicle appropriate signs had been posted and maintained upon the streets and highways which gave proper due warning that a school zone was being approached and which indicated the school zone and the maximum speed limit in effect during school days when school children are present.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-605 (West 2009) (formerly Ill.Rev.Stat. ch. 95 1/2 § 11-605 (1991)).

Give Instruction 23.65A.

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.66B Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident Resulting In Bodily Harm To A Child Under He Age Of 16**

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of 16; and

*Fourth Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

*Fifth Proposition:* That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of 16 being transported by the defendant; and

*Sixth Proposition:* That the defendant's [(driving) (being in actual physical control of)] a vehicle while having an alcohol concentration in his blood or breath of 0.08 or more was the proximate cause of the bodily harm to the child under the age of 16 being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.65B.

Give Instruction 23.30A, defining “alcohol concentration”.

Give Instruction 23.28A, defining “proximate cause”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under

Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.66C Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Accident While Driving In A School Speed Zone As Enhancing Factor**

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more when there is a motor vehicle accident while driving in a school speed zone, the State must prove the following propositions:

*First Proposition:* That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

*Second Proposition:* That at the time the defendant drove a vehicle the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

*Third Proposition:* That at the time the defendant drove a vehicle the defendant was involved in a motor vehicle accident; and

*Fourth Proposition:* That the accident in which defendant was involved resulted in bodily harm to another person; and

*Fifth Proposition:* That the defendant's act of driving a vehicle while the alcohol concentration in his blood or breath is 0.08 or more was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.65C.

Give Instruction 23.30A, defining "alcohol concentration".

Give Instruction 4.23, defining "school speed zone".

Give Instruction 23.28A, defining "proximate cause".

In *People v. Ziltz*, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. See also *People v. Avery*, 277 Ill.App.3d 824, 661 N.E.2d 361 (1st Dist. 1995). The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).



**23.66D Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving Without Liability Insurance**

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.65D.

Give Instruction 23.30A, defining "alcohol concentration".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.66E Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Defendant Does Not Possess Drivers License**

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.65E.

Give Instruction 23.30A, defining "alcohol concentration".

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.66F Issues In Aggravated Driving With An Alcohol Concentration Of 0.08 Or More—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

To sustain the charge of aggravated driving with an alcohol concentration of 0.08 or more, the State must prove the following propositions:

*First Proposition:* That the defendant drove a school bus; and

*Second Proposition:* That at the time the defendant drove a school bus, the alcohol concentration in the defendant's blood or breath was 0.08 or more; and

*Third Proposition:* That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(1) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as "aggravated" until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed "children" to "persons 18 years of age or younger".

Give Instruction 23.65F.

Give Instruction 23.30A, defining "alcohol concentration".

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42-43. The Committee believes that this holding extends to the offense of aggravated driving with an alcohol concentration of 0.08 or more under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

**23.67 Definition Of Transportation Of Alcoholic Liquor In A Motor Vehicle—Driver**

A person commits the offense of transportation of alcoholic liquor in a motor vehicle when, as a driver of a motor vehicle upon a highway, he [(transports) (carries) (possesses) (has)] any alcoholic liquor not in its original container with its seal unbroken, within the passenger area of the motor vehicle.

**Committee Note**

625 ILCS 5/11-502(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-502(a) (1991)).

Give Instruction 23.68.

Use this instruction when a driver of a motor vehicle is charged. Use Instruction 23.69 when a passenger of a motor vehicle is charged.

Section 11-502 does not contain a mental state and has been construed to impose strict liability upon the driver of a motor vehicle in *People v. Angell*, 184 Ill.App.3d 712, 133 Ill.Dec. 240, 540 N.E.2d 1106 (2d Dist.1989), and *People v. Graven*, 124 Ill.App.3d 990, 80 Ill.Dec. 149, 464 N.E.2d 1132 (4th Dist.1984). However, in *People v. DeVoss*, 150 Ill.App.3d 38, 103 Ill.Dec. 523, 501 N.E.2d 840 (3d Dist.1986), the court held that Section 11-502 does not impose strict liability and that knowledge of the open alcohol is required before the statute is violated. The Committee takes no position on the issue of whether a mental state is an element of the offense. If the trial court determines that a mental state is required when a driver is charged, this instruction should be modified by adding the word “knowingly” after the word “he.”

For a definition of the terms “driver,” “highway,” and “motor vehicle,” see 625 ILCS 5/1-116, 5/1-126, 5/1-146 (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §§ 1-116, 1-126, and 1-146 (1991)), respectively.

Use applicable bracketed material.



**23.67B Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Bodily Harm To A Child Under The Age Of 16**

A person commits the offense of aggravated driving under the influence of alcohol when he [(drives) (is in actual physical control of)] a vehicle while under the influence of alcohol, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while being under the influence of alcohol is the proximate cause of the bodily harm to the child under the age of 16.

**Committee Note**

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.68B.

Give Instruction 23.29, defining “under the influence of alcohol”.

Give Instruction 23.28A, defining “proximate cause”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.67C Definition Of Aggravated Driving Under The Influence Of Alcohol—Accident While Driving In A School Speed Zone As Enhancing Factor**

A person commits the offense of aggravated driving under the influence of alcohol when he drives a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect while under the influence of alcohol and he is involved in a motor vehicle accident that results in bodily harm to another person and his act of driving a vehicle under the influence of alcohol is a proximate cause of the bodily harm.

**Committee Note**

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.68C.

Give Instruction 23.29, defining “under the influence of alcohol”.

Give Instruction 4.23, defining “school speed zone”.

Give Instruction 23.28A, defining “proximate cause”.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

### 23.67D Definition Of Aggravated Driving Under The Influence Of Alcohol—Driving Without Liability Insurance

A person commits the offense of aggravated driving under the influence of alcohol when he [(drives) (is in actual physical control of)] a vehicle while under the influence of alcohol, and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

#### Committee Note

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.68D.

Give Instruction 23.29, defining “under the influence of alcohol”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.67E Definition Of Aggravated Driving Under The Influence Of Alcohol—Defendant Does Not Possess Drivers License**

A person commits the offense of aggravated driving under the influence of alcohol when he [(drives) (is in actual physical control of)] a vehicle while under the influence of alcohol, and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

**Committee Note**

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.68E.

Give Instruction 23.29, defining “under the influence of alcohol”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.67F Definition Of Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

A person commits the offense of aggravated driving under the influence of alcohol when he drives a school bus while under the influence of alcohol, and in so driving a school bus, there are persons 18 years of age or younger on board.

**Committee Note**

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed “children” to “persons 18 years of age or younger”.

Give Instruction 23.68F.

Give Instruction 23.29, defining “under the influence of alcohol”.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.



**23.68 Issues In Transportation Of Alcoholic Liquor In A Motor Vehicle—Driver**

To sustain the charge of transportation of alcoholic liquor in a motor vehicle, the State must prove the following propositions:

*First Proposition:* That the defendant was the driver of a motor vehicle upon a highway; and

*Second Proposition:* That at the time the defendant was the driver of the motor vehicle, he [(transported) (carried) (possessed) (had)] alcoholic liquor within the passenger area of the motor vehicle; and

*Third Proposition:* That the alcoholic liquor was not in its original container with its seal unbroken.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-502(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-502(a) (1991)).

Give Instruction 23.67.

Use this instruction when a driver of a vehicle is charged. Use Instruction 23.70 when a passenger of a motor vehicle is charged.

The Committee takes no position on the issue of whether a mental state is an element of the offense. If the trial court determines that a mental state is required, this instruction should be modified by adding the word “knowingly” after the word “he” in the Second Proposition. See Committee Note to Instruction 23.67 concerning the absence of a mental state in Section 11-502.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**23.68B Issues In Aggravated Driving Under The Influence Of Alcohol—Accident Resulting In Bodily Harm To A Child Under The Age Of 16**

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of alcohol; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of 16; and

*Fourth Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

*Fifth Proposition:* That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of 16 being transported by the defendant; and

*Sixth Proposition:* That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the influence of alcohol was the proximate cause of the bodily harm to the child under the age of 16 being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.67B.

Give Instruction 23.29, defining “under the influence of alcohol”.

Give Instruction 23.28A, defining “proximate cause”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.68C Issues In Aggravated Driving Under The Influence Of Alcohol—Accident While Driving In A School Speed Zone As Enhancing Factor**

To sustain the charge of aggravated driving under the influence of alcohol when there is a motor vehicle accident while driving in a school speed zone, the State must prove the following propositions:

*First Proposition:* That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

*Second Proposition:* That at the time the defendant drove a vehicle the defendant was under the influence of alcohol; and

*Third Proposition:* That at the time the defendant drove a vehicle the defendant was involved in a motor vehicle accident; and

*Fourth Proposition:* That the accident in which defendant was involved resulted in bodily harm to another person; and

*Fifth Proposition:* That the defendant's act of driving a vehicle while under the influence of alcohol was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501 (a)(2) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.67C.

Give Instruction 23.29, defining "under the influence of alcohol".

Give Instruction 4.23, defining "school speed zone".

Give Instruction 23.28A, defining "proximate cause".

In *People v. Ziltz*, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.



**23.68D Issues In Aggravated Driving Under The Influence Of Alcohol—Driving Without Liability Insurance**

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of alcohol; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.67D.

Give Instruction 23.30A, defining “under the influence of alcohol”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### 23.68E Issues In Aggravated Driving Under The Influence Of Alcohol—Defendant Does Not Possess Drivers License

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of alcohol; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.67E.

Give Instruction 23.30A, defining “under the influence of alcohol”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.68F Issues In Aggravated Driving Under The Influence Of Alcohol—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

To sustain the charge of aggravated driving under the influence of alcohol, the State must prove the following propositions:

*First Proposition:* That the defendant drove a school bus; and

*Second Proposition:* That at the time the defendant drove a school bus, the defendant was under the influence of alcohol; and

*Third Proposition:* That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(2) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed “children” to “persons 18 years of age or younger”.

Give Instruction 23.67F.

Give Instruction 23.30A, defining “under the influence of alcohol”.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).



### 23.69 Definition Of Possession Of Alcoholic Liquor In A Motor Vehicle—Passenger

A person commits the offense of possession of alcoholic liquor in a motor vehicle when he, as a passenger of a motor vehicle upon a highway, knowingly [(carries) (possesses) (has)] any alcoholic liquor not in its original container with its seal unbroken, within the passenger area of the motor vehicle.

#### Committee Note

625 ILCS 5/11-502(b) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-502(b) (1991)).

Give Instruction 23.70.

Use this instruction when a passenger of a motor vehicle is charged. Use Instruction 23.67 when a driver of a motor vehicle is charged.

Although Section 11-502 does not include a mental state, it has been held that a passenger must knowingly carry, possess or have open alcohol in order to violate the statute. See *People v. Angell*, 184 Ill.App.3d 712, 133 Ill.Dec. 240, 540 N.E.2d 1106 (2d Dist.1989), *People v. DeVoss*, 150 Ill.App.3d 38, 103 Ill.Dec. 523, 501 N.E.2d 840 (3d Dist.1986), and *People v. Rascher*, 223 Ill.App.3d 847, 166 Ill.Dec. 131, 585 N.E.2d 1153 (4th Dist.1992). As a result, a knowledge element has been included in this instruction.

For a definition of the terms “highway” and “motor vehicle,” see 625 ILCS 5/1-126, 5/1-146 (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §§ 1-126 and 1-146 (1991)), respectively.

Use applicable bracketed material.



**23.69B Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Accident Resulting In Bodily Harm To A Child Under The Age Of 16**

A person commits the offense of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when he [(drives) (is in actual physical control of)] a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders him incapable of safely driving is the proximate cause of the bodily harm to the child under the age of 16.

**Committee Note**

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.70B.

Give Instruction 23.28A, defining “proximate cause”.

Give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the influence of an intoxicating compound or combination of intoxicating compounds under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### **23.69C Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Accident While Driving In A School Speed Zone As Enhancing Factor**

A person commits the offense of aggravating driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when he drives a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders such person incapable of safely driving while driving a vehicle in a school speed zone at a time when a speed limit of 20 miles per hour was in effect and in so driving he is involved in a motor vehicle accident that results in bodily harm to another person and his act of driving a vehicle under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders him incapable of safely driving is a proximate cause of the bodily harm.

#### **Committee Note**

625 ILCS 5/11-501 (a)(3) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.70C.

Give Instruction 4.23, defining “school speed zone”.

Give Instruction 4.25, defining “intoxicating compound”.

Give Instruction 23.28A, defining “proximate cause”.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of an intoxicating compound or combination of intoxicating compounds under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979). 11-501(a). See Committee Note to Instruction 23.13 for a comment on the interpretation of Section

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.69D Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Driving Without Liability Insurance**

A person commits the offense of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when he [(drives) (is in actual physical control of)] a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

**Committee Note**

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.70D.

Give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of an intoxicating compound or combination of intoxicating compounds under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



### **23.69E Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Defendant Does Not Possess Drivers License**

A person commits the offense of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when he [(drives) (is in actual physical control of)] a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

#### **Committee Note**

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.70E.

Give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of an intoxicating compound or combination of intoxicating compounds under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.69F Definition Of Aggravated Driving Under The Influence Of Intoxicating Compound—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

A person commits the offense of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when he drives a school bus while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which renders such person incapable of safely driving, and in so driving a school bus, there are persons 18 years of age or younger on board.

**Committee Note**

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed “children” to “persons 18 years of age or younger”.

Give Instruction 23.70F.

Give Instruction 4.25, defining “intoxicating compound”.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of an intoxicating compound or combination of intoxicating compounds under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.70 Issues In Possession Of Alcoholic Liquor In A Motor Vehicle—Passenger**

To sustain the charge of possession of alcoholic liquor in a motor vehicle, the State must prove the following propositions:

*First Proposition:* That the defendant was a passenger in a motor vehicle upon a highway; and

*Second Proposition:* That at the time the defendant was a passenger in the motor vehicle he knowingly [(carried) (possessed) (had)] alcoholic liquor within the passenger area of the motor vehicle; and

*Third Proposition:* That the alcoholic liquor was not in its original container with its seal unbroken.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-502(b) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 11-502(b) (1991)).

Give Instruction 23.69.

Use this instruction when a passenger of a motor vehicle is charged. Use Instruction 23.68 when a driver of a motor vehicle is charged.

See Committee Note to Instruction 23.69 for a discussion of the applicable mental state.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**23.70B Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Accident Resulting In Bodily Harm To A Child Under The Age Of 16**

To sustain the charge of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)], the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of 16; and

*Fourth Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

*Fifth Proposition:* That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of 16 being transported by the defendant; and

*Sixth Proposition:* That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered the defendant incapable of safely driving was the proximate cause of the bodily harm to the child under the age of 16 being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.69B.

Give Instruction 23.28A, defining “proximate cause”.

Give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court



held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the influence of any intoxicating compound or a combination of intoxicating compounds under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.70C Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Accident While Driving In A School Speed Zone As Enhancing Factor**

To sustain the charge of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] when there is a motor vehicle accident while driving in a school speed zone, the State must prove the following propositions:

*First Proposition:* That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

*Second Proposition:* That at the time the defendant drove a vehicle the defendant was under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant drove a vehicle the defendant was involved in a motor vehicle accident; and

*Fourth Proposition:* That the accident in which the defendant was involved resulted in bodily harm to another person; and

*Fifth Proposition:* That the defendant's act of driving a vehicle while under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered him incapable of safely driving was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501 (a)(3) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.69C.

Give Instruction 4.23, defining “school speed zone”.

Give Instruction 4.25, defining “intoxicating compound”.

Give Instruction 23.28A, defining “proximate cause”.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of alcohol under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.70D Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Driving Without Liability Insurance**

To sustain the charge of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)], the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered him incapable of safely driving; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.69D.

Give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of any intoxicating compound or a combination of intoxicating compounds under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



### 23.70E Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Defendant Does Not Possess Drivers License

To sustain the charge of aggravated driving under the influence of [(any intoxicating compound)(a combination of intoxicating compounds)], the State must prove the following propositions:

*First Proposition:* That the defendant [(drove)(was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(R) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(R), effective January 1, 2006.

Give Instruction 23.69E.

Give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of any intoxicating compound or a combination of intoxicating compounds under Section 11-501(d)(1)(R) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.70F Issues In Aggravated Driving Under The Influence Of Intoxicating Compound—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

To sustain the charge of aggravated driving under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)], the State must prove the following propositions:

*First Proposition:* That the defendant drove a school bus; and

*Second Proposition:* That at the time the defendant drove a school bus, the defendant was under the influence of [(any intoxicating compound) (a combination of intoxicating compounds)] to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(3) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A. 88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed “children” to “persons 18 years of age or younger”.

Give Instruction 23.69F.

Give Instruction 4.25, defining “intoxicating compound”.

The Illinois Supreme Court has upheld the constitutionality of Section 11-501(a)(1) and has ruled that actual impairment of the ability to drive a vehicle is not an element of the offense. *People v. Ziltz*, 98 Ill.2d 38, 455 N.E.2d 70 (1983). The supreme court also held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense. *Ziltz*, 98 Ill.2d at 42–43. The Committee believes that this holding extends to the offense of aggravated driving under the influence of any intoxicating compound or a combination of intoxicating compounds under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### 23.71 Definition Of Aggravated Possession Of Stolen Or Converted Motor Vehicles

A person commits the offense of aggravated possession of stolen or converted motor vehicles when he

[1] [(receives) (possesses) (conceals) (sells) (disposes of) (transfers)] [(3 or more vehicles) (essential parts of 3 or more different vehicles) (a combination of 3 or more vehicles or essential parts of different vehicles)] [(at the same time) (within a one year period)], when he is not entitled to possession of [(those vehicles) (those essential parts of a vehicle)] and he knows that these [(vehicles) (essential parts)] were stolen or converted.

[or]

[2] [(buys) (receives) (possesses) (sells) (disposes of)] [(3 or more vehicles) (3 or more essential parts of different vehicles) (a combination of 3 or more vehicles or essential parts of different vehicles)] [(at the same time) (within a one year period)] knowing that the identification numbers of the [(vehicles) (essential parts with an identification number)] have been [(removed) (falsified)].

[or]

[3] [(receives) (possesses) (conceals) (sells) (disposes of) (transfers)] a vehicle valued at \$25,000 or more, when he is not entitled to the possession of that vehicle and he knows that the vehicle has been [(stolen) (converted)].

[or]

[4] [(receives) (possesses) (conceals) (sells) (disposes of) (transfers)] any [(engine) (transmission) (cab) (cab clip) (vehicle cowl)] of a [(second division vehicle) (semitrailer) (farm tractor) (tow truck) (rescue squad vehicle) (medical transport vehicle) (fire engine) (special mobile equipment) (dump truck) (truck mounted transit mixer) (crane)], when he is not entitled to the possession of that [(engine) (transmission) (cab) (cab clip) (vehicle cowl)] of a [(second division vehicle) (semitrailer) (farm tractor) (tow truck) (rescue squad vehicle) (medical transport vehicle) (fire engine) (special mobile equipment) (dump truck) (truck mounted transit mixer) (crane)] and he knows that it is [(stolen) (converted)].

[or]

[5] [(receives) (possesses) (conceals) (sells) (disposes of) (transfers)] any vehicle which is owned or operated by a law enforcement agency, when he is not entitled to the possession of that vehicle, he knows that it is the property of a law enforcement agency, and knows that it is [(stolen) (converted)].

[or]

[6] wilfully [(fails or refuses to obey) (increases his speed after receiving) (extinguishes his lights after receiving)] a peace officer's signal to bring a vehicle to a stop [or otherwise flees or attempts to elude the officer] and

[a] he is the driver or operator of that vehicle, he is not entitled to the possession of that vehicle, and he knows that the vehicle is [(stolen) (converted)].



[or]

[b] he is the driver or operator of that vehicle, the vehicle is being used to transport or haul [(another vehicle) (an essential part of a vehicle)], he is not entitled to possession of that [(other vehicle) (essential part of a vehicle)] being transported or hauled, and he knows that the transported or hauled [(vehicle) (essential part)] is [(stolen) (converted)]. [The signal given by the peace officer may be by hand, voice, siren, or red or blue light, but an officer driving a vehicle must display the vehicle's illuminated, oscillating, rotating or flashing red or blue lights which, when used in conjunction with an audible horn or siren, would indicate that the vehicle is an official police vehicle.]

#### Committee Note

625 ILCS 5/4-103.2(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 4-103.2(a) (1991)).

Give Instruction 23.72.

When the defendant is charged with possessing stolen vehicles or essential parts of vehicles, give Instructions 13.33G (Definition of Stolen Property) and § 13.01 (Definition of Theft). Because this instruction uses the term “stolen vehicle,” the definition of “stolen property” should accompany this instruction. Because “stolen property” is defined as “property over which control has been obtained by *theft*,” the definition of theft should accompany the definition of stolen property. (Emphasis added.) See *People v. Cozart*, 235 Ill.App.3d 1076, 176 Ill.Dec. 627, 601 N.E.2d 1325 (2d Dist.1992). Although the court in *People v. Bradley*, 192 Ill.App.3d 387, 139 Ill.Dec. 358, 548 N.E.2d 743 (1st Dist.1989), held that the word “stolen” implies the definition of theft and the intent to permanently deprive—and that the jury therefore *need not* be instructed on those terms—Bradley did not hold it impermissible or error to do so. Therefore, in part to comply with *Cozart*, the Committee has decided that the instructions should include the definitions of stolen property and theft.

When the defendant is charged with possessing converted vehicles or essential parts of vehicles, give Instruction 23.35A, defining the term “converted” property.

When the defendant is charged with possessing the essential parts of three or more vehicles, give Instruction 23.25B.

Bracketed paragraphs [1] through [3] correspond to the respective subsection numbers in Section 4-103.2. However, when the defendant is charged with violating subsection (5), use bracketed paragraph [4]. When the defendant is charged with violating subsection (6), use bracketed paragraph [5]. When the defendant is charged with violating subsection (7), use bracketed paragraph [6].

The bracketed paragraph at the end of this instruction pertains only to bracketed paragraph [6]. Use this paragraph only when the defendant is charged with refusing or failing to obey a police officer's signal to stop a stolen vehicle or a vehicle hauling or transporting a stolen vehicle, and the mode of signalling the defendant to stop is an issue.

Section 4-103(a)(1) (non-aggravated possession of a stolen motor vehicle)

contains a provision that allows the jury to infer knowledge that the vehicle is stolen based on the mere fact that the defendant possessed the vehicle or essential parts in question. See Instruction 23.36A. However, Section 4-103.2(a)(1) (aggravated possession of stolen or converted motor vehicles) does not contain this language, but instead merely describes the offense. Therefore, the Committee has not provided an instruction on this inference for aggravated possession of stolen or converted motor vehicles.

See Instructions 23.35 and § 23.36 regarding the non-aggravated version of this offense.

When using bracketed paragraph [6], see *People v. Marquis*, 54 Ill.App.3d 209, 11 Ill.Dec. 918, 369 N.E.2d 372 (4th Dist.1977), concerning the required mental state of wilfulness; see also 720 ILCS 5/4-5 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-5 (1991)).

Use applicable bracketed material.



**23.71B Definition Of Aggravated Driving Under The Influence Of Drugs—Accident Resulting In Bodily Harm To A Child Under The Age Of 16**

A person commits the offense of aggravated driving under the influence of drugs when he [(drives) (is in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving, and in [(so driving) (being in the actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving is the proximate cause of the bodily harm to the child under the age of 16.

**Committee Note**

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.72B.

Give Instruction 23.28A, defining “proximate cause”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.71C Definition Of Aggravated Driving Under The Influence Of  
Drugs—Accident While Driving In A School Speed Zone As  
Enhancing Factor**

A person commits the offense of aggravated driving under the influence of drugs when he drives a vehicle while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving while driving in a school speed zone at a time when a speed limit of 20 miles per hour was in effect, and in so driving a vehicle, he is involved in a motor vehicle accident that results in bodily harm to another person and his act of driving a vehicle while under the influence of any drug or combination of drugs to a degree which renders him incapable of safely driving is a proximate cause of the bodily harm.

**Committee Note**

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(E) (West 2010) amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.72C.

Give Instruction 4.23, defining “school speed zone”.

Give Instruction 23.28A, defining “proximate cause”.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70, 72 (1983).

**23.71D Definition Of Aggravated Driving Under The Influence Of Drugs—Driving Without Liability Insurance**

A person commits the offense of aggravated driving under the influence of drugs when he [(drives) (is in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree that renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

**Committee Note**

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.72D.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.71E Definition Of Aggravated Driving Under The Influence Of  
Drugs—Defendant Does Not Possess Drivers License**

A person commits the offense of aggravated driving under the influence of drugs when he [(drives) (is in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

**Committee Note**

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.72E.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.71F Definition Of Aggravated Driving Under The Influence Of  
Drugs—Driving A School Bus With Persons 18 Years Of Age Or  
Younger On Board**

A person commits the offense of aggravated driving under the influence of drugs when he drives a school bus while under the influence of any drug or combination of drugs to a degree which renders such person incapable of safely driving, and in so driving a school bus, there are persons 18 years of age or younger on board.

**Committee Note**

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed “children” to “persons 18 years of age or younger”.

Give Instruction 23.72F.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist.1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

**23.72 Issues In Aggravated Possession Of Stolen Or Converted Motor Vehicles**

To sustain the charge of aggravated possession of stolen or converted motor vehicles, the State must prove the following propositions:

[1] *First Proposition:* That the defendant [(received) (possessed) (concealed) (sold) (disposed of) (transferred)] [(3 or more vehicles) (the essential parts of 3 or more different vehicles) (a combination of 3 or more vehicles or essential parts of different vehicles)]; and

*Second Proposition:* That the defendant did so [(at the same time) (within a one year period)]; and

*Third Proposition:* That the defendant was not entitled to possession of those [(vehicles) (essential parts)]; and

*Fourth Proposition:* That when the defendant did so, he knew that those [(vehicles) (essential parts)] were stolen or converted.

[or]

[2] *First Proposition:* That the defendant [(bought) (received) (possessed) (sold) (disposed of)] [(3 or more vehicles) (3 or more essential parts of different vehicles) (a combination of 3 or more vehicles or essential parts of different vehicles)]; and

*Second Proposition:* That the defendant did so [(at the same time) (within a one year period)]; and

*Third Proposition:* That when the defendant did so, he knew that the identification numbers of the [(vehicles) (essential parts with an identification number)] had been [(removed) (falsified)].

[or]

[3] *First Proposition:* That the defendant [(received) (possessed) (concealed) (sold) (disposed of) (transferred)] a vehicle; and

*Second Proposition:* That the defendant was not entitled to the possession of that vehicle; and

*Third Proposition:* That the vehicle was valued at \$25,000 or more; and

*Fourth Proposition:* That when the defendant did so, he knew that the vehicle was [(stolen) (converted)].

[or]

[4] *First Proposition:* That the defendant [(received) (possessed) (concealed) (sold) (disposed of) (transferred)] any [(engine) (transmission) (cab) (cab clip) (vehicle cowl)] of a [(second division vehicle) (semitrailer) (farm tractor) (tow truck) (rescue squad vehicle) (medical transport vehicle) (fire engine) (special mobile equipment) (dump truck) (truck mounted transit mixer) (crane)]; and

*Second Proposition:* That the defendant was not entitled to the possession of that [(engine) (transmission) (cab) (cab clip) (vehicle cowl)] of a [(second division vehicle) (semitrailer) (farm tractor) (tow truck) (rescue squad vehicle) (medical

transport vehicle) (fire engine) (special mobile equipment) (dump truck) (truck mounted transit mixer) (crane)]; and

*Third Proposition:* That when the defendant did so, he knew that the [(engine) (transmission) (cab) (cab clip) (vehicle cowl)] of a [(second division vehicle) (semitrailer) (farm tractor) (tow truck) (rescue squad vehicle) (medical transport vehicle) (fire engine) (special mobile equipment) (dump truck) (truck mounted transit mixer) (crane)] was [(stolen) (converted)].

[or]

[5] *First Proposition:* That the defendant [(received) (possessed) (concealed) (sold) (disposed of) (transferred)] a vehicle; and

*Second Proposition:* That the defendant was not entitled to the possession of that vehicle; and

*Third Proposition:* That a law enforcement agency owned or operated that vehicle; and

*Fourth Proposition:* That when the defendant did so, he knew that the vehicle was the property of a law enforcement agency; and

*Fifth Proposition:* That when the defendant did so, he also knew that the vehicle was [(stolen) (converted)].

[or]

[6] *First Proposition:* That the defendant drove or operated a vehicle; and

*Second Proposition:* That a peace officer signalled the defendant to stop that vehicle; and

*Third Proposition:* That the defendant wilfully [(failed or refused to obey a peace officer's signal to bring that vehicle to a stop) (increased his speed) (extinguished his lights)] [or otherwise fled or attempted to elude the officer]; and

[a] *Fourth Proposition:* That the defendant was not entitled to the possession of the vehicle he drove or operated; and

*Fifth Proposition:* That when the defendant did so, he knew that the vehicle was [(stolen) (converted)].

[or]

[b] *Fourth Proposition:* That the vehicle the defendant drove or operated was being used to transport or haul [(a vehicle) (an essential part of a vehicle)]; and

*Fifth Proposition:* That the defendant was not entitled to possession of that [(vehicle) (essential part of a vehicle)] being transported or hauled; and

*Sixth Proposition:* That when the defendant did so, he knew that the transported or hauled [(vehicle) (essential part)] was [(stolen) (converted)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.



If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/4-103.2(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 4-103.2(a) (1991)).

Give Instructions 23.71 and see the Committee Note to that instruction.

The bracketed numbers in this instruction correspond to the bracketed numbers in Instruction 23.71. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.



**23.72B Issues In Aggravated Driving Under The Influence Of  
Drugs—Accident Resulting In Bodily Harm To A Child Under The  
Age Of 16**

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of) a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of sixteen; and

*Fourth Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

*Fifth Proposition:* That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of sixteen being transported by the defendant; and

*Sixth Proposition:* That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving was the proximate cause of the bodily harm to the child under the age of sixteen being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.71B.

Give Instruction 23.28A, defining “proximate cause”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs

under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.72C Issues In Aggravated Driving Under The Influence Of  
Drugs—Accident While Driving In A School Speed Zone As An  
Enhancing Factor**

To sustain the charge of aggravated driving under the influence of drugs when there is an accident while driving in a school speed zone, the State must prove the following propositions:

*First Proposition:* That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

*Second Proposition:* That at the time the defendant drove a vehicle the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant drove a vehicle the defendant was involved in a motor vehicle accident; and

*Fourth Proposition:* That the accident in which defendant was involved resulted in bodily harm to another person; and

*Fifth Proposition:* That the defendant's act of driving a vehicle while under the influence of any drug or combination of drugs to a degree which rendered him incapable of safely driving was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501 (a)(4) and 625 ILCS 5/11-501(d)(1)(E) (West 2010), amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.71C.

Give Instruction 4.23, defining “school speed zone”.

Give Instruction 23.28A, defining “proximate cause”.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983).



### 23.72D Issues In Aggravated Driving Under The Influence Of Drugs—Driving Without Liability Insurance

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.71D.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.72E Issues In Aggravated Driving Under The Influence Of Drugs—Defendant Does Not Possess Drivers License**

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.71E.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### **23.72F Issues In Aggravated Driving Under The Influence Of Drugs—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

To sustain the charge of aggravated driving under the influence of drugs, the State must prove the following propositions:

*First Proposition:* That the defendant drove a school bus; and

*Second Proposition:* That at the time the defendant drove a school bus, the defendant was under the influence of any drug or combination of drugs to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### **Committee Note**

625 ILCS 5/11-501(a)(4) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed “children” to “persons 18 years of age or younger”.

Give Instruction 23.71F.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving under the influence of drugs or combination of drugs to a degree which renders him incapable of safely driving under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

**23.73 Definition Of Possession Or Use Of Radar Detection Devices**

A person commits the offense of possession or use of a radar detection device when he [(operates) (is in actual physical control of)] a commercial motor vehicle while the motor vehicle is equipped with any instrument designed to detect the presence of police radar for the purpose of monitoring vehicular speed.

**Committee Note**

625 ILCS 5/12-712(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 12-712(a) (1992)), added by P.A. 87-1202, effective January 1, 1993.

Give Instruction 23.74.

Give Instruction 23.73A, defining the term “equipped”.

Give the definition of the term “commercial motor vehicle” (see 625 ILCS 5/6-500(6) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 6-500(6) (1991))) when appropriate.

Section 12-712(b) excludes the possession of a radar detection device that is contained in a locked opaque box or similar container or that is not in the passenger compartment of the vehicle and is not in operation.

Use applicable bracketed material.

**23.73A Definition Of Equipped—Possession Or Use Of Radar Detection Devices Or Radar Jamming Devices**

The term “equipped” means possession or use within a commercial motor vehicle.

**Committee Note**

625 ILCS 5/12-712(a) and 12-713(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, §§ 12-712(a) and 12-713(a) (1992)), added by P.A. 87-1202, effective January 1, 1993.

For a definition of the term “commercial motor vehicle”, see 625 ILCS 5/6-500(6) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 6-500(6) (1991)).



**23.73B Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Bodily Harm To A Child Under The Age Of 16**

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he [(drives) (is in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders him incapable of safely driving is the proximate cause of the bodily harm to the child under the age of 16.

**Committee Note**

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.74B.

Give Instruction 23.28A, defining “proximate cause”.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Bitterman*, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.73C Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds—Accident While Driving In A School Speed Zone As Enhancing Factor**

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs or intoxicating compound or compounds when he drives a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders him incapable of safely driving while driving a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect, and in so driving a vehicle he is involved in a motor vehicle accident that results in bodily harm to another person, and his act of driving a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving is a proximate cause of the bodily harm.

**Committee Note**

625 ILCS 5/11-501 (a)(5) and 625 ILCS 5/11-501(d)(1)(E) (West 2010), amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.74C.

Give Instruction 4.23, defining “school speed zone”.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

Give Instruction 23.28A, defining “proximate cause”.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in *People v. Gassman*, 251 Ill. App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See *People v. Bitterman*, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of a combination of alcohol and drugs.

**23.73D Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving Without Liability Insurance**

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he [(drives) (is in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

**Committee Note**

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.74D.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Bitterman*, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



### **23.73E Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Defendant Does Not Possess Drivers License**

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he [(drives) (is in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving, and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

#### **Committee Note**

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.74E.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Bitterman*, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.73F Definition Of Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

A person commits the offense of aggravated driving under the combined influence of alcohol and drugs when he drives a school bus while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which renders such person incapable of safely driving, and in so driving a school bus, there are persons 18 years of age or younger on board.

**Committee Note**

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed “children” to “persons 18 years of age or younger”.

Give Instruction 23.74F.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Bitterman*, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding the time frame when it must be shown that the defendant was under the influence of alcohol.

**23.74 Issues In Possession Or Use Of Radar Detection Devices**

To sustain the charge of possession or use of a radar detection device, the State must prove the following propositions:

*First Proposition:* That the defendant [(operated) (was in actual physical control of)] a commercial motor vehicle; and

*Second Proposition:* That the commercial motor vehicle was equipped with any instrument designed to detect the presence of police radar for the purpose of monitoring vehicular speed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/12-712(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 12-712(a) (1992)), added by P.A. 87-1202, effective January 1, 1993.

Give Instruction 23.73.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

**23.74B Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Accident Resulting In Bodily Harm To A Child Under The Age Of 16**

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of 16; and

*Fourth Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

*Fifth Proposition:* That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of 16 being transported by the defendant; and

*Sixth Proposition:* That the defendant's [(driving) (being in actual physical control of)] a vehicle while under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving was the proximate cause of the bodily harm to the child under the age of 16 being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008.

Give Instruction 23.73B.

Give Instruction 23.28A, defining “proximate cause”.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a



strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2nd Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.74C Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs Or Intoxicating Compound Or Compounds—Accident While Driving In A School Speed Zone As Enhancing Factor**

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, or intoxicating compound or compounds when there is an accident while driving in a school speed zone, the State must prove the following propositions:

*First Proposition:* That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

*Second Proposition:* That at the time the defendant drove a vehicle the defendant was under the combined influence of alcohol and any drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That the defendant, in so driving a vehicle, was involved in a motor vehicle accident; and

*Fourth Proposition:* That the accident in which defendant was involved resulted in bodily harm to another person; and

*Fifth Proposition:* That the defendant's driving a vehicle while under the combined influence of alcohol and any drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(E) (West 2010), amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002.

Give Instruction 23.73C.

Give Instruction 4.23, defining "school speed zone".

When applicable, give Instruction 4.24, defining "intoxicating compound".

Give Instruction 23.28A, defining "proximate cause".

In *People v. Ziltz*, 98 Ill.2d 38, 42-43, 455 N.E.2d 70 (1983), the Illinois Supreme Court held that the offense of driving under the influence of alcohol under Section 11-501(a)(1) is a strict liability offense, and in *People v. Gassman*, 251 Ill.App.3d 681, 688-89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict

liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

**23.74D Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving Without Liability Insurance**

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006.

Give Instruction 23.73D.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Bitterman*, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding

the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.74E Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Defendant Does Not Possess Drivers License**

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006.

Give Instruction 23.73E.

When applicable, give Instruction 4.25 defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Bitterman*, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding

the time frame when it must be shown that the defendant was under the influence of alcohol.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.74F Issues In Aggravated Driving Under The Combined Influence Of Alcohol And Drugs—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

To sustain the charge of aggravated driving under the combined influence of alcohol and drugs, the State must prove the following propositions:

*First Proposition:* That the defendant drove a school bus; and

*Second Proposition:* That at the time the defendant drove a school bus, the defendant was under the combined influence of alcohol and any other drug or drugs or intoxicating compound or compounds to a degree which rendered the defendant incapable of safely driving; and

*Third Proposition:* That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-501(a)(5) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed “children” to “persons 18 years of age or younger”.

Give Instruction 23.73F.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving under the combined influence of alcohol and drugs under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

See *People v. Bitterman*, 142 Ill.App.3d 1062, 492 N.E.2d 582 (1st Dist. 1986), concerning what must be proven in a combined alcohol and drug case; see also *People v. Brower*, 131 Ill.App.2d 548, 268 N.E.2d 196 (1st Dist. 1971), regarding

the time frame when it must be shown that the defendant was under the influence of alcohol.



**23.75 Definition Of Possession Or Use Of Radar Jamming Devices**

A person commits the offense of possession or use of a radar jamming device when he [(operates) (is in actual physical control of)] a commercial motor vehicle while the motor vehicle is equipped with any instrument designed to interfere with microwaves at frequencies used by police radar for the purpose of monitoring vehicular speed.

**Committee Note**

625 ILCS 5/12-713(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 12-713(a) (1992)), added by P.A. 87-1202, effective January 1, 1993.

Give Instruction 23.76.

Give Instruction 23.73A, defining the term “equipped”.

Give the definition of the term “commercial motor vehicle” (see 625 ILCS 5/6-500(6) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 6-500(6) (1991))) when appropriate.

Section 12-713(b) excludes the possession of a radar jamming device that is contained in a locked opaque box or similar container or that is not in the passenger compartment of the vehicle and is not in operation.

Use applicable bracketed material.

**23.75B Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Accident Resulting In Bodily Harm To A Child Under The Age Of 16**

A person commits the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine when he [(drives) (is in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] and in [(so driving) (being in the actual physical control of)] a vehicle, he is involved in a motor vehicle accident that results in bodily harm to a child under the age of 16 being transported by him, and his [(driving) (being in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] is the proximate cause of the bodily harm to the child under the age of 16.

**Committee Note**

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding “methamphetamine”) and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding “breath”).

Give Instruction 23.76B.

Give Instruction 23.28A, defining “proximate cause”.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2nd Dist. 1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in breath, blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman*, 251 Ill.App.3d at 688–89. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2nd Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.75C Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Accident While Driving In A School Speed Zone As Enhancing Factor**

A person commits the offense of aggravated driving with a drug, substance, or compound in the persons' breath, blood, or urine when he drives a vehicle while there is any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] while driving a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect, and in so driving a vehicle he is involved in a motor vehicle accident that results in bodily harm to another person, and his driving a vehicle while there is any amount of a drug, substance, or compound in his breath, blood, or urine resulting from his unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] is a proximate cause of the bodily harm.

**Committee Note**

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(E) (West 2010), amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding “methamphetamine”) and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding “breath”).

Give Instruction 23.76C.

Give Instruction 4.23, defining “school speed zone”.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

Give Instruction 23.28A, defining “proximate cause”.

In *People v. Gassman*, 251 Ill.App.3d 681, 692–93, 622 N.E.2d 845 (2d Dist. 1993), the court upheld the constitutionality of Section 11-501(a)(6). The court also held that the offense of driving with a drug, substance, or compound in blood or urine under Section 11-501(a)(6) is a strict liability offense. *Gassman*, 251 Ill.App.3d at 688–89. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



### **23.75D Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving Without Liability Insurance**

A person commits the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine when he [(drives) (is in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] and in [(so driving) (being in actual physical control of)] a vehicle, he [(knew) (should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

#### **Committee Note**

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine"), and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

Give Instruction 23.76D.

When applicable, give Instruction 4.25, defining "intoxicating compound".

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**23.75E Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Defendant Does Not Possess Drivers License**

A person commits the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine when he [(drives) (is in actual physical control of)] a vehicle while there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] and in [(so driving) (being in actual physical control of)] a vehicle, he does not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

**Committee Note**

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding “methamphetamine”), and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding “breath”).

Give Instruction 23.76E.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.75F Definition Of Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

A person commits the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine when he drives a school bus while there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (a controlled substance) (an intoxicating compound) (methamphetamine)] and in so driving a school bus, there are persons 18 years of age or younger on board.

**Committee Note**

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed “children” to “persons 18 years of age or younger”. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding “methamphetamine”), and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding “breath”).

Give Instruction 23.76F.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.76 Issues In Possession Or Use Of Radar Jamming Devices**

To sustain the charge of possession or use of a radar jamming device, the State must prove the following propositions:

*First Proposition:* That the defendant [(operated) (was in actual physical control of)] a commercial motor vehicle; and

*Second Proposition:* That the commercial motor vehicle was equipped with any instrument designed to interfere with microwaves at frequencies used by police radar for the purpose of monitoring vehicular speed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/12-713(a) (West 1992) (formerly Ill.Rev.Stat. ch. 951/2, § 12-713(a) (1992)), added by P.A. 87-1202, effective January 1, 1993.

Give Instruction 23.75.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.



### 23.76B Issues In Aggravated Driving With A Drug, Substance Or Compound In Breath, Blood, Or Urine—Accident Resulting In Bodily Harm To A Child Under The Age Of 16

To sustain the charge of aggravated driving with a drug, substance, or compound in breath, blood, or urine, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, there was any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (\_\_\_\_\_, a controlled substance) (an intoxicating compound) (methamphetamine)]; and

*Third Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, the defendant was transporting a child under the age of 16; and

*Fourth Proposition:* That the defendant, in [(so driving) (being in actual physical control of)] a vehicle, was involved in a motor vehicle accident; and

*Fifth Proposition:* That the motor vehicle accident in which defendant was involved resulted in bodily harm to the child under the age of 16 being transported by the defendant; and

*Sixth Proposition:* That the defendant's [(driving) (being in actual physical control of)] a vehicle while there was any amount of a drug, substance, or compound in his breath, blood or urine resulting from the unlawful use or consumption of [(cannabis) (\_\_\_\_\_, a controlled substance) (an intoxicating compound) (methamphetamine)] was the proximate cause of the bodily harm to the child under the age of 16 being transported by the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(J) (West 2010). Section 11-501 was amended by P.A. 95-578 which added Section 11-501(d)(1)(J), effective June 1, 2008. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding “methamphetamine”), 11-501(a)(1) amended by P.A. 90-779, effective January 1, 1999 (adding “breath”).

When applicable, insert in the blank the name of the controlled substance.

Give Instruction 23.75B.

Give Instruction 23.28A, defining “proximate cause”.



When applicable, give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court upheld the constitutionality of Section 11-501(a)(5). The court also held that the offense of driving with a drug, substance, or compound in breath, blood or urine under Section 11-501(a)(5) is a strict liability offense. *Gassman*, 251 Ill.App.3d at 688–89. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(J) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

See Committee Note to Instruction 23.13 for a comment on the interpretation of Section 11-501(a).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### 23.76C Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Accident While Driving In A School Speed Zone As Enhancing Factor

To sustain the charge of aggravated driving with a drug, substance, or compound in breath, blood or urine when there is an accident while driving in a school speed zone, the State must prove the following propositions:

*First Proposition:* That the defendant drove a vehicle at any speed in a school speed zone at a time when a speed limit of 20 miles per hour was in effect; and

*Second Proposition:* That at the time the defendant drove a vehicle there was any amount of a drug, substance, or compound in his breath, blood or urine resulting from the unlawful use or consumption of [(cannabis) (\_\_\_\_\_, a controlled substance) (an intoxicating compound) (methamphetamine)]; and

*Third Proposition:* That the defendant, in so driving a vehicle, was involved in a motor vehicle accident; and

*Fourth Proposition:* That the accident in which defendant was involved resulted in bodily harm to another person; and

*Fifth Proposition:* That the defendant's driving a vehicle while there was any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (\_\_\_\_\_, a controlled substance) (an intoxicating compound) (methamphetamine)] was a proximate cause of the bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(E) (West 2010), amended by P.A. 95-578, effective January 1, 2008. Section 11-501 was amended by P.A. 92-429 which added Section 11-501(d)(1)(E), effective January 1, 2002. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding "methamphetamine") and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding "breath").

Give Instruction 23.75C.

Give Instruction 4.23, defining "school speed zone".

When applicable, give Instruction 4.25, defining "intoxicating compound".

Give Instruction 23.28A, defining "proximate cause".

When applicable, insert in the blank the name of the controlled substance.

In *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist.

1993), the court held that the offense of driving with a drug, substance, or intoxicating compound in blood or urine under Section 11-501(a)(5) is a strict liability offense. The Committee believes that this holding extends to the offense of aggravated driving with a drug, substance, or intoxicating compound in breath, blood, or urine under Section 11-501(d)(1)(E) and accordingly has not included a mental state in this instruction.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



### 23.76D Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving Without Liability Insurance

To sustain the charge of aggravated driving with a drug, substance, or compound in breath, blood, or urine, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, there was any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful consumption of [(cannabis) (\_\_\_\_\_, a controlled substance) (any intoxicating compound) (methamphetamine); and

*Third Proposition:* That at the time the defendant [(drove)(was in actual physical control of)] a vehicle, the defendant [(knew)(should have known)] that the vehicle he was [(driving) (in actual physical control of)] was not covered by a liability insurance policy.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(I) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(I), effective January 1, 2006. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding “methamphetamine”), and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding “breath”).

Give Instruction 23.75D.

When applicable, insert in the blank the name of the controlled substance.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(I) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.



The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### 23.76E Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Defendant Does Not Possess Drivers License

To sustain the charge of aggravated driving with a drug, substance, or compound in breath, blood, or urine, the State must prove the following propositions:

*First Proposition:* That the defendant [(drove) (was in actual physical control of)] a vehicle; and

*Second Proposition:* That at the time the defendant [(drove) (was in actual physical control of)] a vehicle, there was any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (\_\_\_\_\_, a controlled substance) (an intoxicating compound) (methamphetamine)]; and

*Third Proposition:* That at the time the defendant [(drove)(was in actual physical control of)] a vehicle, the defendant did not possess a drivers license or permit or a restricted driving permit or a judicial driving permit or a monitoring device driving permit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(H) (West 2010). Section 11-501 was amended by P.A. 94-329 which added Section 11-501(d)(1)(H), effective January 1, 2006. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding “methamphetamine”), and Section 11-501(a)(1) was amended by P.A. 90-779, effective January 1, 1999 (adding “breath”).

Give Instruction 23.75E.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

When applicable, insert in the blank the name of the controlled substance.

When actual physical control is an issue, give Instruction 23.43.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(H) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

### **23.76F Issues In Aggravated Driving With A Drug, Substance, Or Compound In Breath, Blood, Or Urine—Driving A School Bus With Persons 18 Years Of Age Or Younger On Board**

To sustain the charge of aggravated driving with a drug, substance, or compound in breath, blood, or urine, the State must prove the following propositions:

*First Proposition:* That the defendant drove a school bus; and

*Second Proposition:* That at the time the defendant drove a school bus, there was any amount of a drug, substance, or compound in his breath, blood, or urine resulting from the unlawful use or consumption of [(cannabis) (\_\_\_\_\_, a controlled substance) (an intoxicating compound) (methamphetamine)]; and

*Third Proposition:* That at the time the defendant drove a school bus, there were persons 18 years of age or younger on board.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### **Committee Note**

625 ILCS 5/11-501(a)(6) and 625 ILCS 5/11-501(d)(1)(B) (West 2010) (formerly Ill. Rev. Stat. ch. 95 1/2 §§ 11-501(a)(1) and 11-501(d)(2) (1991)), amended by P.A.88-680, effective January 1, 1995. Although the aggravating factor of driving a school bus has been part of Section 11-501 since 1983, the offense was not defined as “aggravated” until P.A. 87-274, effective January 1, 1992. P.A. 93-800, effective January 1, 2005, changed “children” to “persons 18 years of age or younger”. Section 11-501 was also amended by P.A. 95-355, effective January 1, 2008 (adding “methamphetamine”), 11-501(a)(1) amended by P.A. 90-779, effective January 1, 1999 (adding “breath”).

Give Instruction 23.75F.

When applicable, give Instruction 4.25, defining “intoxicating compound”.

When applicable, insert in the blank the name of the controlled substance.

In *People v. Ziltz*, 98 Ill.2d 38, 42–43, 455 N.E.2d 70 (1983), the supreme court held that the offense of driving under the influence under Section 11-501(a)(1) is a strict liability offense and in *People v. Gassman*, 251 Ill.App.3d 681, 688–89, 622 N.E.2d 845 (2d Dist. 1993), the court held that the offense of driving under the influence of drugs under Section 11-501(a)(5) is a strict liability offense. The Committee believes that these holdings extend to the offense of aggravated driving with a drug, substance, or compound in breath, blood, or urine under Section 11-501(d)(1)(B) and accordingly has not included a mental state in this instruction. See also *People v. Teschner*, 76 Ill.App.3d 124, 394 N.E.2d 893 (2d Dist. 1979).

Use applicable bracketed material.



The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**23.77 Definition Of Improper Lane Usage**

A person commits the offense of improper lane usage when he drives a vehicle on a roadway which has been divided into two or more clearly marked lanes for traffic and he [(does not drive as nearly as practicable entirely within a single lane) (moves from his lane of traffic without first ascertaining that such movement can be made with safety)].

**Committee Note**

625 ILCS 5/11-709(a) (West 1995) (formerly Ill.Rev.Stat. ch. 951/2, § 11-709(a)).

Give Instruction 23.78.

In *People v. Smith*, 172 Ill.2d 289, 216 Ill.Dec. 658, 665 N.E.2d 1215 (1996), the Court held that section 11-709(a) establishes two separate requirements for proper lane usage.

Section 11-709 of the Vehicle Code is titled "Driving on Roadways Laned for Traffic," but is commonly referred to as "improper lane usage." See *People v. Smith*, 269 Ill.App.3d 962, 207 Ill.Dec. 348, 647 N.E.2d 310 (4th Dist. 1995).

For a definition of the terms "roadway" and "vehicle," see 625 ILCS 5/1-179 and 1-217 (West 1995) (formerly Ill.Rev.Stat. ch. 951/2, §§ 1-179 and 1-217).

Use applicable bracketed material.

**23.78 Issues In Improper Lane Usage**

To sustain the charge of improper lane usage, the State must prove the following propositions:

*First Proposition:* That the defendant drove a vehicle on a roadway which was divided into two or more clearly marked lanes for traffic; and

*Second Proposition:* That when the defendant did so, he [(did not drive as nearly as practicable entirely within a single lane) (moved from his lane of traffic without first ascertaining that such movement could be made with safety)].

If you find from your consideration of all the evidence that each one of these propositions has been proven beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proven beyond a reasonable doubt, you should find the defendant not guilty.

**Committee Note**

625 ILCS 5/11-709(a) (West 1995) (formerly Ill.Rev.Stat. ch. 951/2, § 11-709(a)).

Give Instruction 23.77.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

### 23.79 Definition Of Driving On Approach To An Emergency Vehicle

A person commits the offense of driving on approach to an emergency vehicle when:

[1] he causes damage to another vehicle as a result of driving a vehicle when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights, while on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the defendant's vehicle, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle if possible with due regard for safety and traffic conditions.

[or]

[2] he causes damage to another vehicle as a result of driving a vehicle when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights, while on a roadway where changing lanes would be impossible or unsafe, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, and leave a safe distance until safely past the authorized emergency vehicle.

[or]

[3] he causes the injury or death of another person as a result of driving a vehicle when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights while on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the defendant's vehicle, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle if possible with due regard for safety and traffic conditions.

[or]

[4] he causes the injury or death of another person as a result of driving a vehicle when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights, while on a roadway where changing lanes would be impossible or unsafe, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, and leave a safe distance until safely past the authorized emergency vehicle.



**Committee Note**

625 ILCS 5/11-907(c) (West 2021), last amended by P.A. 102-0336, effective January 1, 2022.

Section 11-907 of the Illinois Vehicle Code is commonly referred to as Scott's Law. The most recent amendment to Scott's Law, P.A. 101-173, created a misdemeanor criminal offense for violations that result in damage to another vehicle and a felony criminal offense for violations that result in the injury or death of another person. The definition in paragraphs [1] and [3] reflects the language of Section 11-907(c)(1) and Section 11-907(d); the definition in paragraphs [2] and [4] reflects the language of Section 11-907(c)(2) and Section 11-907(d).

Give Instruction 23.79X, defining the term "authorized emergency vehicle."

The terms "due caution" and "due regard for safety and traffic conditions" in paragraphs [1] and [2] are undefined in the Illinois Vehicle Code, and the Committee takes no position on their meaning.

Use applicable paragraph and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

**23.79X Definition Of Authorized Emergency Vehicle**

The term "authorized emergency vehicle" means:

[1] an emergency vehicle of a municipal department or public service corporation as designated or authorized by proper local authorities.

[or]

[2] a police vehicle.

[or]

[3] a vehicle of the fire department.

[or]

[4] a vehicle of an authorized HazMat or technical rescue team.

[or]

[5] an ambulance.

[or]

[6] a vehicle of the Illinois Department of Corrections.

[or]

[7] a vehicle of the Illinois Department of Juvenile Justice.

[or]

[8] a vehicle of the Illinois Emergency Management Agency.

[or]

[9] a vehicle of the Office of the Illinois State Fire Marshal.

[or]

[10] a mine rescue and explosives emergency response vehicle of the Department of Natural Resources.

[or]

[11] a vehicle of the Illinois Department of Public Health.

[or]

[12] a vehicle of the Illinois State Toll Highway Authority [(with a gross weight rating of 9,000 pounds or more) (identified as Highway Emergency Patrol)].

[or]

[13] an Emergency Traffic Patrol vehicle of the Illinois Department of Transportation.

[or]

[14] a vehicle of a municipal or county emergency services and disaster agency.

[or]

[15] a vehicle authorized by law to be equipped with oscillating, rotating, or flashing lights while the owner or operator of the vehicle is engaged in his official duties.

#### Committee Note

625 ILCS 5/1-105 (West 2020), last amended by P.A. 100-62 § 5, effective August 11, 2017; 625 ILCS 5/11-907(c) (West 2020), last amended by P.A. 101-173, § 10, effective January 1, 2020; 625 ILCS 5/12-215 (West 2020), last amended by P.A. 101-56, § 5, effective January 1, 2020.

The term “authorized emergency vehicle” was initially codified in Section 1-505 of the Illinois Vehicle Code with the enactment of P.A. 76-1586, § 1-105, effective July 1, 1970. Accordingly, the definitions in paragraphs [1] through [14] reflect the language currently used in Section 1-105.

In the context of criminal charges for violation of Section 11-907(c) of the Illinois Vehicle Code (commonly referred to as Scott’s Law), the term “authorized emergency vehicle” also includes vehicles authorized pursuant to Section 12-215 of the Vehicle Code to be equipped with oscillating, rotating, or flashing lights. The definition in paragraph [15] reflects the expanded language enacted by P.A. 92-283, § 5, effective January 1, 2002. This particular definition is only applicable to Scott’s Law violations.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

### 23.80 Issues In Driving On Approach To An Emergency Vehicle

To sustain the charge of driving on approach to an emergency vehicle, the State must prove the following propositions:

[1] *First Proposition:* That the defendant drove a vehicle on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the defendant's vehicle; and

*Second Proposition:* That while driving, the defendant approached a signaling, stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights; and

*Third Proposition:* That the defendant failed to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible, with due regard for safety and traffic conditions; and

*Fourth Proposition:* That in doing so, the defendant caused damage to another vehicle.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

[2] *First Proposition:* That the defendant drove a vehicle on a roadway where changing lanes would be impossible or unsafe, when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights; and

*Second Proposition:* That the defendant failed to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, and leave a safe distance until safely past the authorized emergency vehicle; and

*Third Proposition:* That in doing so, the defendant caused damage to another vehicle.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

[3] *First Proposition:* That the defendant drove a vehicle on a highway having at



least four lanes with not less than two lanes proceeding in the same direction as the defendant's vehicle; and

*Second Proposition:* That while driving, the defendant approached a signaling, stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights; and

*Third Proposition:* That the defendant failed to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible, with due regard for safety and traffic conditions; and

*Fourth Proposition:* That in doing so, the defendant caused the injury or death of another person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

[4] *First Proposition:* That the defendant drove a vehicle on a roadway where changing lanes would be impossible or unsafe, when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights; and

*Second Proposition:* That the defendant failed to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, and leave a safe distance until safely past the authorized emergency vehicle; and

*Third Proposition:* That in doing so, the defendant caused the injury or death of another person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

#### Committee Note

625 ILCS 5/11-907(c) (West 2021), last amended by P.A. 102-0336, effective January 1, 2022.

Section 11-907 of the Illinois Vehicle Code is commonly referred to as Scott's Law. The most recent amendment to Scott's Law, P.A. 101-173, created a

misdemeanor criminal offense for violations that result in damage to another vehicle and a felony criminal offense for violations that result in the injury or death of another person. The definition in paragraphs [1] and [3] reflects the language of Section 11-907(c)(1) and Section 11-907(d); the definition in paragraphs [2] and [4] reflects the language of Section 11-907(c)(2) and Section 11-907(d).

Give Instruction 23.79.

Give Instruction 23.79X, defining the term “authorized emergency vehicle.”

The terms “due caution” and “due regard for safety and traffic conditions” in paragraphs [1] and [2] are undefined in the Illinois Vehicle Code, and the Committee takes no position on their meaning.

Use applicable paragraph and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



# Chapter 24-25.00

## DEFENSES

### SYNOPSIS

24-25.00	INTRODUCTION
24-25.01	Definition Of Insanity
24-25.01A	Issues In Defense Of Insanity
24-25.01B	Guilty But Mentally Ill
24-25.01C	Definition Of Mentally Ill
24-25.01D	Issues In Defense Of Insanity When Jury Is To Be Instructed On Guilty But Mentally Ill Verdict
24-25.01E	Issues In Defense Of Insanity When Jury Is To Be Instructed On Both First Degree Murder And Second Degree Murder (Provocation)—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict
24-25.01F	Issues In Defense Of Insanity When Jury Is To Be Instructed On First And Second Degree Murder (Provocation) And The Guilty But Mentally Ill Verdict
24-25.01G	Issues In Defense Of Insanity When Jury Is To Be Instructed On Both First Degree Murder And Second Degree Murder (Belief In Justification)—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict
24-25.01H	Issues In Defense Of Insanity When Jury Is To Be Instructed On First And Second Degree Murder (Belief In Justification) And The Guilty But Mentally Ill Verdict
24-25.01I	Issues When Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On The Insanity Defense
24-25.01J	Issues When The Jury Is To Be Instructed On First And Second Degree Murder (Provocation) And The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On The Insanity Defense
24-25.01K	Issues When Jury Is To Be Instructed On First And Second Degree Murder (Belief In Justification) And The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On The Insanity Defense
24-25.02	Definition Of Voluntary Intoxication Or Drugged Condition
24-25.02A	Issue In Defense Of Voluntary Intoxication Or Drugged Condition
24-25.03	Involuntary Intoxication Or Drugged Condition
24-25.03A	Issue In Defense Of Involuntary Intoxication Or Drugged Condition
24-25.04	Definition Of Entrapment
24-25.04A	Issues In Defense Of Entrapment



24-25.05	Alibi
24-25.06	Use Of Force In Defense Of A Person
24-25.06A	Issue In Defense Of Justifiable Use Of Force
24-25.07	Use Of Force In Defense Of Dwelling
24-25.08	Use Of Force In Defense Of Property
24-25.09	Initial Aggressor's Use Of Force
24-25.09X	Non-Initial Aggressor—No Duty To Retreat
24-25.10	Forcible Felon Not Entitled To Use Force
24-25.11	Provocation Of First Force As Excuse For Retaliation
24-25.12	Peace Officer's Use Of Force In Making Arrest
24-25.13	Peace Officer's Use Of Force To Prevent Escape From Custody
24-25.14	Peace Officer's Use Of Force To Prevent Escape From Penal Institution
24-25.15	Definition Of Force Likely To Cause Death Or Great Bodily Harm
24-25.16	Private Person's Use Of Force In Making Arrest—Not Summoned By Peace Officer
24-25.17	Private Person's Use Of Force In Making Arrest—Summoned By Peace Officer
24-25.18	Private Person's Use Of Force To Prevent Escape—Not Summoned By Peace Officer
24-25.19	Private Person's Use Of Force To Prevent Escape—Summoned By Peace Officer
24-25.20	Private Person's Use Of Force In Resisting Arrest
24-25.21	Definition Of Compulsion
24-25.21A	Issue In Defense Of Compulsion
24-25.22	Necessity
24-25.22A	Issue In Defense Of Necessity
24-25.23	Prosecutions Brought Under Exceptions To The Statute Of Limitations Normally Applicable (Before January 1, 2018)
24-25.23A	Issue In Statute Of Limitations Exceptions (Before January 1, 2018)
24-25.23X	Prosecutions Brought Under Exceptions To The Statute Of Limitations Normally Applicable (As Of January 1, 2018)
24-25.23Y	Issue In Statute Of Limitations Exceptions (As Of January 1, 2018)
24-25.24	Definition Of Defense Of Mistake Of Fact
24-25.24A	Issues In Defense Of Mistake Of Fact
24-25.25	Defense To Home Invasion
24-25.25A	Issue In Defense To Home Invasion
24-25.26	Exemption To Perjury—Contradictory Statements
24-25.27	Defense To Criminal Damage To Property And Arson
24-25.27A	Issues In Defense To Criminal Damage To Property And Arson

## 24-25.00 INTRODUCTION

Chapters 24 and 25 of the original IPI instructions are combined in this edition into one chapter. This has been done to bring the presentation of affirmative defense instructions into conformity with the general format followed in most of this edition (*i.e.*, the definitional instruction followed immediately by the issues instruction).

The Committee believes that elements or issues of an affirmative defense should be treated in two ways: *first*, by definition following the definition of the crime with which the defendant is charged; *second*, in the same instruction with the issues or elements of the crime and the State's burden of proof. See Chapters 6 through 23, *supra*. The appropriate issues and burden of proof defenses instruction should be superimposed upon the appropriate issues and burden of proof crimes instruction so that the jury receives a single instruction covering all of the issues in the case. See Chapter 27, *infra*, for examples.

**24-25.01 Definition Of Insanity**

A person is insane and not criminally responsible for his conduct if at the time of the conduct, as a result of mental disease or mental defect, he lacks substantial capacity [either] to appreciate the criminality of his conduct [or to conform his conduct to the requirements of the law

[Abnormality manifested only by repeated criminal, or otherwise anti-social conduct, is not mental disease or mental defect.]

**Committee Note**

720 ILCS 5/6-2 (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 6-2), amended by P.A. 89-404, effective August 20, 1995.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. Accordingly, for offenses allegedly committed on or after August 20, 1995, do not use the bracketed material in the first paragraph of this instruction. P.A. 89-404 also changed the defendant's burden to establish the insanity defense from "preponderance of the evidence" to "clear and convincing evidence."

Give the bracketed second paragraph only when the evidence shows repeated criminal or other anti-social conduct. *People v. Fierer*, 124 Ill. 2d 176, 124 Ill. Dec. 855, 529 N.E.2d 972 (1988); *People v. Foster*, 43 Ill. App. 3d 490, 2 Ill. Dec. 1, 356 N.E.2d 1288 (5th Dist. 1976); *People v. Bourlet*, 52 Ill. App. 2d 437, 202 N.E.2d 46 (3d Dist. 1964).

Give Instruction 2.03B, concerning burden of proof in insanity cases.



**24-25.01A Issues In Defense Of Insanity**

*[Place at the top of this instruction the issues for the offense charged.]*

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of \_\_\_\_\_], your deliberations [on this charge] should end, and you should return the verdict of not guilty [of \_\_\_\_\_].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations [on this charge] to decide whether the defendant has proved by a preponderance of the evidence that he is not guilty by reason of insanity [of \_\_\_\_\_].

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless you have first determined that the State has proved the defendant guilty beyond a reasonable doubt [of \_\_\_\_\_].

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing evidence) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of \_\_\_\_\_], your deliberations [on this charge] should end, and you should return the verdict of not guilty by reason of insanity [of \_\_\_\_\_].

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing evidence) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty [of \_\_\_\_\_].

**Committee Note**

720 ILCS 5/6-2(e) (West 1999) formerly Ill. Rev. Stat. ch. 38, § 6-2(e) (1991).

Give Instruction 24-25.01, defining “insanity” and Instruction 4.18, defining the phrase “preponderance of the evidence.”

These paragraphs should be included in the issues instructions for each charge when the defense of insanity has been raised. These paragraphs should be substituted for the two concluding paragraphs which otherwise are present in the issues instructions for all charges. Give these admonitions to the jury immediately following the listing of the propositions which the State must prove. When the jury is instructed on both insanity and the guilty but mentally ill verdict, do not use this instruction; instead, use Instruction 24-25.01D. When both first degree murder and second degree murder also are in issue, give the appropriate instructions chosen from 24-25.01E through 24-25.01K.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill. App. 3d 158, 103 Ill. Dec. 450, 501 N.E.2d 767 (1st Dist. 1986); *People v. Fields*, 170 Ill. App. 3d 1, 120 Ill. Dec. 285, 523 N.E.2d 1196 (1st Dist. 1988)



For crimes committed on or after January 1, 1984 up to August 19, 1995, P.A. 83-288 places the burden on a defendant to prove his insanity by a preponderance of the evidence. *See* *People v. Skorka*, 147 Ill. App. 3d 976, 101 Ill. Dec. 283, 498 N.E.2d 607 (1st Dist. 1986); *People v. Hickman*, 143 Ill. App. 3d 195, 97 Ill. Dec. 382, 492 N.E.2d 1041 (5th Dist. 1986). For these offenses, use the bracketed phrase “preponderance of the evidence.” Give Instruction 4.18 defining the phrase “preponderance of the evidence.”

However, for crimes committed August 20, 1995 and after, P.A. 89-404 places the burden on the defendant to establish the insanity defense by “clear and convincing evidence.” Accordingly, for offenses allegedly committed on August 20, 1995 and after, use the bracketed phrase “clear and convincing evidence.” Give Instruction 4.19 defining the phrase “clear and convincing evidence.”

Use applicable bracketed material.

**24-25.01B Guilty But Mentally Ill**

A person may be found guilty but mentally ill and is not relieved of criminal responsibility for his conduct if at the time of the commission of the offense he was not insane but was suffering from a mental illness.

**Committee Note**

720 ILCS 5/6-2(c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 6-2(c) (1991)).

For an example of the use of this instruction, see Sample Sets 27.04A and 27.04B.

**24-25.01C Definition Of Mentally Ill**

A person is mentally ill if, at the time of the commission the offense, he was afflicted by a substantial disorder of thought, mood, or behavior which impaired his judgment, but not to the extent that he was unable to appreciate the wrongfulness of his behavior [or was unable to conform his conduct to the requirements of the law].

**Committee Note**

720 ILCS 5/6-2 (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 6-21), amended by P.A. 89-404, effective August 20, 1995.

P.A. 89-404, effective August 20, 1995, modified the definition of mentally ill, by eliminating the volitional prong of the insanity defense, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of the law. Accordingly, for offenses committed on or after August 20, 1995, do not use the bracketed material.

## 24-25.01D Issues In Defense Of Insanity When Jury Is To Be Instructed On Guilty But Mentally Ill Verdict

*[Place at the top of this instruction the issues for the offense charged.]*

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of \_\_\_\_\_], your deliberations [on this charge] should end, and you should return the verdict of not guilty [of \_\_\_\_\_].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations [on this charge] to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of \_\_\_\_\_].

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless you have first determined that the State has proved the defendant guilty beyond a reasonable doubt [of \_\_\_\_\_].

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of \_\_\_\_\_], your deliberations [on this charge] should end, and you should return the verdict of not guilty by reason of insanity [of \_\_\_\_\_].

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity [of \_\_\_\_\_], then you should continue your deliberations [on this charge] to determine whether the defendant is guilty but mentally ill [of \_\_\_\_\_].

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

*First:* That the State has proved beyond a reasonable doubt that the defendant is guilty of \_\_\_\_\_, and

*Second:* That the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he was insane at the time he committed the offense of \_\_\_\_\_; and

*Third:* That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed the offense of \_\_\_\_\_.

If you find from your consideration of all the evidence that each one of these circumstances is present, you may return the special verdict finding the defendant guilty but mentally ill [of \_\_\_\_\_].

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the defendant is guilty of \_\_\_\_\_ and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty [of \_\_\_\_\_].



### Committee Note

720 ILCS 5/6-2(e) (West 1994) (formerly Ill. Rev. Stat. ch. 38, §§ 6-2(e) and 115-4(j)), amended by P.A. 89-404, effective August 20, 1995.

P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See *People v. Fierer*, 124 Ill. 2d 176, 124 Ill. Dec. 855, 529 N.E.2d 972 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the defendant's burden to establish the insanity defense from "preponderance of the evidence" to "clear and convincing evidence." Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase "clear and convincing."

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase "preponderance of the evidence." For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase "clear and convincing evidence."

Give Instruction 24-25.01, defining "insanity," Instruction 24-25.01B, defining "guilty but mentally ill," and Instruction 24-25.01C, defining "mentally ill."

When insanity or guilty but mentally ill is an issue in a first degree murder and second degree murder case, give the appropriate instruction to be chosen from Instructions 24-25.01E through 24-25.01K.

These paragraphs should be included in the issues instructions for each charge when the defense of insanity has been raised and the evidence warrants providing the jury with a special verdict form of guilty but mentally ill as to each offense charged. These paragraphs should be substituted for the two concluding paragraphs which otherwise are present in the issues instructions for all charges. Give these admonitions to the jury immediately following the listing of the propositions which the State must prove.

Do not use this instruction if the jury is to be instructed on the insanity defense, but, for whatever reason, the special verdict form of guilty but mentally ill is not to be provided to the jury. The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill. App. 3d 158, 103 Ill. Dec. 450, 501 N.E.2d 767 (1st Dist. 1986); *People v. Fields*, 170 Ill. App. 3d 1, 120 Ill. Dec. 285, 523 N.E.2d 1196 (1st Dist. 1988). The Committee takes no position on whether the phrase "may be returned" is permissive or mandatory. See *Gurga*.

Use applicable bracketed material if more than one charge is at issue.

**24-25.01E Issues In Defense Of Insanity When Jury Is To Be Instructed On Both First Degree Murder And Second Degree Murder (Provocation)—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict**

*[Place at the top of this instruction the issues for the offense charged.]*

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return the verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is probably more true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of \_\_\_\_\_, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavored to kill, but he negligently or accidentally killed the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity



of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, and you should return a verdict of guilty on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, and you should return a verdict of guilty on that murder charge.

#### Committee Note

720 ILCS 5/6-2(c) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 6-2(e)), amended by P.A. 89-404, effective August 20, 1995.

Give Instruction 24-25.01, defining “insanity.”

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the burden on the defendant to establish the insanity defense from “preponderance of the evidence” to “clear and convincing evidence.” Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase “clear and convincing.”

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase “preponderance of the evidence.” For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase “clear and convincing evidence.”

These paragraphs should be included in the issues instructions for first degree murder when the court has determined that the jury should be instructed on both the insanity defense and second degree murder based upon provocation. Give these paragraphs to the jury immediately following the listing of the propositions which the State must prove in Instruction 7.04A.

When the jury is to be instructed on the insanity defense and second degree murder (provocation), and is also to receive the special verdict form of guilty but mentally ill, do not use this instruction; instead, use Instruction 24-25.01F. The Committee takes no position on the question of whether the special verdict form on guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill. App. 3d 158, 103 Ill. Dec. 450, 501 N.E.2d 767 (1st Dist. 1986); *People v. Fields*, 170 Ill. App. 3d 1, 120 Ill. Dec. 285, 523 N.E.2d 1196 (1st Dist. 1988).

See Committee Notes for Instructions 7.04A, 24-25.01, 24-25.01A, and 24-25.01D.



Use bracketed material if there is more than one charge at issue.

**24-25.01F Issues In Defense Of Insanity When Jury Is To Be Instructed On First And Second Degree Murder (Provocation) And The Guilty But Mentally Ill Verdict**

*[Place at the top of this instruction the issues for the offense charged.]*

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return the verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of \_\_\_\_\_, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavored to kill, but he negligently or accidentally killed the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, you

found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity of first degree or second degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill on that murder charge.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

*First:* That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

*Second:* That the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he was insane at the time he committed whichever murder you found earlier to apply; and

*Third:* That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to be applicable.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

#### Committee Note

720 ILCS 5/6-2(e), 9-2(a)(1), 9-2(b), 9-2(c) (West 1994) (formerly Ill. Rev. Stat. ch. 38, §§ 6-2(e), 9-2(a)(1), 9-2(b), 9-2(c), and 115-4(j)), amended by P.A. 89-404, effective August 20, 1995. P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See *People v. Fierer*, 124 Ill. 2d 176, 124 Ill. Dec. 855, 529 N.E.2d 972 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

P.A. 89-404, effective August 20, 1995, modified the insanity defense by



eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the defendant's burden to establish the insanity defense from "preponderance of the evidence" to "clear and convincing evidence." Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase "clear and convincing."

Give Instruction 24-25.01, defining "insanity," Instruction 24-25.01B, defining "guilty but mentally ill," and Instruction 24-25.01C, defining "mentally ill."

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase "preponderance of the evidence." For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase "clear and convincing evidence."

These paragraphs should be included in the issues instructions for first degree murder when the jury is to be instructed on second degree murder (provocation) and the insanity defense, and is also to receive the special verdict form of guilty but mentally ill. Give these admonitions to the jury immediately following the listing of the propositions in Instruction 7.04A which the State must prove.

See Committee Notes for Instructions 7.04A, 24-25.01D, and 24-25.01E.

Use bracketed material if more than one charge is at issue.



**24-25.01G Issues In Defense Of Insanity When Jury Is To Be Instructed On Both First Degree Murder And Second Degree Murder (Belief In Justification)—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict**

*[Place at the top of this instruction the issues for the offense charged.]*

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return the verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of \_\_\_\_\_, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity

of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, you should find the defendant guilty of whichever murder charge, either first degree murder or second degree murder, you found earlier to be applicable, and you should return a verdict of guilty on that murder charge.

### Committee Note

720 ILCS 5/6-2 (West 1994) (formerly Ill. Rev. Stat. ch. 38, §§ 6-2(e), 9-2(a)(1), 9-2(b), 9-2(c), and 115-4(j)), amended by P.A. 89-404, effective August 20, 1995.

Give Instruction 24-25.01, defining “insanity.”

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the defendant’s burden to establish the insanity defense from “preponderance of the evidence” to “clear and convincing evidence.” Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase “clear and convincing.”

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase “preponderance of the evidence.” For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase “clear and convincing evidence.”

These paragraphs should be included in the issues instructions for first degree murder when the court has determined that the jury should be instructed on both the insanity defense and second degree murder based upon provocation. Give these paragraphs to the jury immediately following the listing of the propositions which the State must prove in Instruction 7.04A.

When the jury is to be instructed on the insanity defense and second degree murder (provocation), and is also to receive the special verdict form of guilty but mentally ill, do not use this instruction; instead, use Instruction 24-25.01F. The Committee takes no position on the question of whether the special verdict form on guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill. App. 3d 158, 103 Ill. Dec. 450, 501 N.E.2d 767 (1st Dist. 1986); *People v. Fields*, 170 Ill. App. 3d 1, 120 Ill. Dec. 285, 523 N.E.2d 1196 (1st Dist. 1988).

See Committee Notes for Instructions 7.04A, 24-25.01, 24-25.01A, and 24-25.01D.

Use bracketed material if more than one charge is at issue.



**24-25.01H Issues In Defense Of Insanity When Jury Is To Be Instructed On First And Second Degree Murder (Belief In Justification) And The Guilty But Mentally Ill Verdict**

*[Place at the top of this instruction the issues for the offense charged.]*

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on these charges] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of \_\_\_\_\_, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met the burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, you

found earlier to be applicable, your deliberations [on that charge] should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he is not guilty by reason of insanity of first degree murder or second degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill on that murder charge.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

*First:* That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

*Second:* That the defendant has not proved by [(clear and convincing) (a preponderance of the)] evidence that he was insane at the time he committed whichever murder you found earlier to apply; and

*Third:* That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to apply.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return a general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

#### Committee Note

720 ILCS 5/6-2(e), 9-2(a)(2), 9-2(c) (West 1994) (formerly Ill. Rev. Stat. ch. 38, §§ 6-2(e), 9-2(a)(2), 9-2(c), and 115-4(j)), amended by P.A. 89-404, effective August 20, 1995. P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See *People v. Fierer*, 124 Ill. 2d 176, 124 Ill. Dec. 855, 529 N.E.2d 972 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

P.A. 89-404, effective August 20, 1995, modified the insanity defense by



eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the defendant's burden to establish the insanity defense from "preponderance of the evidence" to "clear and convincing evidence." Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase "clear and convincing."

Give Instruction 24-25.01, defining "insanity," Instruction 24-25.01B, defining "guilty but mentally ill," and Instruction 24-25.01C, defining "mentally ill."

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase "preponderance of the evidence." For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase "clear and convincing evidence."

These paragraphs should be included in the issues instruction for first degree murder when the jury is also to be instructed on second degree murder (belief of justification) and the insanity defense, and is also to receive the special verdict form of guilty but mentally ill. Give these admonitions to the jury immediately following the listing of the propositions in Instruction 7.06A which the State must prove.

See Committee Notes for Instructions 7.06A, 24-25.01D, and 24-25.01G.

Use bracketed material if more than one charge is at issue.

## 24-25.01I Issues When Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On The Insanity Defense

*[Place at the top of this instruction the issues for the offense charged.]*

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of \_\_\_\_\_], your deliberations [on this charge] should end, and you should return a verdict of not guilty [of \_\_\_\_\_].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill [on this charge].

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

*First:* That the State has proved beyond a reasonable doubt that the defendant is guilty of \_\_\_\_\_; and

*Second:* That the defendant has not proved by a preponderance of the evidence that he was insane at the time he committed \_\_\_\_\_; and

*Third:* That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed \_\_\_\_\_.

If you find from your consideration of all the evidence that each one of these circumstances is present, you may return the special verdict finding the defendant guilty but mentally ill [of \_\_\_\_\_].

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the defendant is guilty of \_\_\_\_\_ and if you find that either the second or third circumstances concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty [of \_\_\_\_\_].

### Committee Note

Chapter 38, Section 115-4(j). P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See *People v. Fierer*, 124 Ill. 2d 176, 124 Ill. Dec. 855, 529 N.E.2d 972 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

Give Instruction 24-25.01, defining "insanity," Instruction 24-25.01B, defining "guilty but mentally ill," Instruction 4.18, defining the phrase "preponderance of the

evidence,” and Instruction 24–25.01C, defining “mentally ill.”

Do not use this instruction if the jury is to be instructed on the insanity defense.

Do not use this instruction if the jury is to be instructed on second degree murder.

These paragraphs should be included in the issues instructions for each charge when the evidence warrants providing the jury with a special verdict form of guilty but mentally ill as to each offense charged. These paragraphs should be substituted for the two concluding paragraphs which otherwise are present in the issues instructions for all charges. Give these admonitions to the jury immediately following the listing of the propositions which the State must prove.

The Committee takes no position on whether the phrase “may be returned” is permissive or mandatory. *People v. Gurga*, 150 Ill. App. 3d 158, 103 Ill. Dec. 450, 501 N.E.2d 767 (1st Dist. 1986).

For crimes committed on or after January 1, 1984, P.A. 83-288 places the burden on a defendant to prove his insanity by a preponderance of the evidence. See *People v. Skorka*, 147 Ill. App. 3d 976, 101 Ill. Dec. 283, 498 N.E.2d 607 (1st Dist. 1986); *People v. Hickman*, 143 Ill. App. 3d 195, 97 Ill. Dec. 382, 492 N.E.2d 1041 (5th Dist. 1986).

Use bracketed material if there is more than one charge at issue.



**24-25.01J Issues When The Jury Is To Be Instructed On First And Second Degree Murder (Provocation) And The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On The Insanity Defense**

*[Place at the top of this instruction the issues for the offense charged.]*

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on this charge] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of \_\_\_\_\_, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of first degree murder.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

*First:* That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

*Second:* That the defendant has not proved by a preponderance of the evidence that he was insane at the time he committed whichever murder you found earlier to apply; and



*Third:* That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to apply.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

#### Committee Note

Chapter 38, Section 9-2(a)(1), 9-2(b), 9-2(c), and 115-4(j). P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See *People v. Fierer*, 124 Ill. 2d 176, 124 Ill. Dec. 855, 529 N.E.2d 972 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

Give Instruction 24-25.01B, defining "guilty but mentally ill," Instruction 24-25.01C, defining "mentally ill," Instruction 4.18, defining the phrase "preponderance of the evidence," and Instruction 24-25.01, defining "insanity."

Do not use this instruction if the jury is to be instructed on the insanity defense.

The Committee takes no position on whether the phrase "may be returned" is permissive or mandatory. See *People v. Gurga*, 150 Ill. App. 3d 158, 103 Ill. Dec. 450, 501 N.E.2d 767 (1st Dist. 1986).

See Committee Notes for Instructions 7.04A and 24-25.01D.

Use bracketed material if there is more than one charge at issue.

**24-25.01K Issues When Jury Is To Be Instructed On First And Second Degree Murder (Belief In Justification) And The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On The Insanity Defense**

*[Place at the top of this instruction the issues for the offense charged.]*

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of first degree murder], your deliberations [on this charge] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of \_\_\_\_\_, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that he is guilty of the lesser offense of second degree murder instead of first degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill of the offense of first degree murder.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

*First:* That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

*Second:* That the defendant has not proved by a preponderance of the evidence that he was insane at the time he committed whichever murder you found earlier to apply; and

*Third:* That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to apply.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstances concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

#### **Committee Note**

Chapter 38, Section 9-2(a)(2), 9-2(c), and 115-4(j). P.A. 86-392, effective January 1, 1990, amended Section 115-4(j) by (1) repealing the previous requirement of Section 115-4(j) that the State had to prove beyond a reasonable doubt that the defendant was not insane, and (2) placing the burden on the defendant to prove by a preponderance of the evidence that he was mentally ill. The first of these changes makes Section 115-4(j) consistent with Section 6-2(e). See *People v. Fierer*, 124 Ill. 2d 176, 124 Ill. Dec. 855, 529 N.E.2d 972 (1988), for the court's discussion of the problems presented by the previous statute. The Committee takes no position as to whether P.A. 86-392 applies to offenses committed before January 1, 1990, but tried after that date.

Give Instruction 24-25.01B, defining "guilty but mentally ill," Instruction 24-25.01C, defining "mentally ill," Instruction 4.18, defining the phrase "beyond a reasonable doubt," and Instruction 24-25.01, defining "insanity."

Do not use this instruction if the jury is to be instructed on the insanity defense.

The Committee takes no position on whether the phrase "may be returned" is permissive or mandatory. See *People v. Gurga*, 150 Ill. App. 3d 158, 103 Ill. Dec. 450, 501 N.E.2d 767 (1st Dist. 1986).

See Committee Notes for Instructions 7.06A and 24-25.01D.

Use bracketed material if there is more than one charge at issue.



## 24-25.02 Definition Of Voluntary Intoxication Or Drugged Condition

A voluntarily [(intoxicated) (drugged)] person is criminally responsible for his conduct unless his [(intoxication) (drugged condition)] is so extreme as to suspend the power of reason and render him incapable of forming a specific intent which is an element of the offense of \_\_\_\_\_. [A voluntarily [(intoxicated) (drugged)] condition is not a defense to the charge of \_\_\_\_\_.]

### Committee Note

*Committee Note Approved July 29, 2016*

720 ILCS 5/6-3(a) (West 2002).

Give Instruction 24-25.02A.

Public Act 92-466, effective January 1, 2002, amended Section 6-3 of the Criminal Code to delete voluntary intoxication or drugged condition as an affirmative defense.

Public Act 85-670, effective January 1, 1988, amended Section 6-3(a) of the Criminal Code to change the definition of voluntarily intoxicated or drugged condition. For offenses allegedly committed before that date, use the form of this instruction as it appeared in the IPI-Criminal Second Edition (1981). *See People v. Marinez*, 196 Ill. App. 3d 316, 143 Ill. Dec. 58, 553 N.E.2d 765 (3d Dist. 1990).

Under the statute before January 1, 1988, a voluntarily intoxicated or drugged condition was not a defense where the mental state involved is recklessness or wilfulness. *See People v. Arndt*, 50 Ill. 2d 390, 280 N.E.2d 230 (1972); *People v. Olson*, 60 Ill. App. 3d 535, 377 N.E.2d 371, (4th Dist. 1978). Since January 1, 1988, it is a defense only to crimes with an element of specific intent. Accordingly, the Committee believes use of the bracketed paragraph might be appropriate in a case in which the jury is to be instructed both on (1) an offense to which voluntary intoxication or drugged condition is a defense, and (2) an offense to which voluntary intoxication or drugged condition is *not* a defense. In this situation, the latter offense should be inserted in the blank in the bracketed paragraph.

This instruction does not relate to involuntary intoxication or drugged condition. *See Instructions 24-25.03 and 24-25.03A.*

Insert in the first blank the name of the appropriate offense to which this instruction applies.

Use applicable bracketed material.



**24-25.02A Issue In Defense Of Voluntary Intoxication Or Drugged Condition**

\_\_\_\_\_ *Proposition:* That at the time of the offense, the defendant's voluntarily intoxicated or drugged condition was not so extreme as to suspend the power of reason and render him incapable of forming a specific intent which is an element of the offense of \_\_\_\_\_.

**Committee Note**

*Committee Note Approved July 29, 2016*

720 ILCS 5/6-3(a) (West 2002).

Public Act 92-466, effective January 1, 2002, amended Section 6-3 of the Criminal Code to delete voluntary intoxication or drugged condition as an affirmative defense.

Give Instruction 24-25.02 and see its Committee Note.

Give this issue as the final proposition in the issues instruction for the offense charged.

For offenses allegedly committed before January 1, 1988, use the form of this instruction as it appeared in the IPI-Criminal Second Edition (1981).

Insert in the blank the number of the proposition.

**24-25.03 Involuntary Intoxication Or Drugged Condition**

A person who is in [(an intoxicated) (a drugged)] condition which has been involuntarily produced is not criminally responsible for his conduct if the condition deprives him of substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

**Committee Note**

720 ILCS 5/6-3(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 6-3(b) (1991)).

Give Instruction 24-25.03A.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter. See *People v. King*, 58 Ill. App. 3d 199, 15 Ill. Dec. 573, 373 N.E.2d 1045 (4th Dist.1978).

Use applicable bracketed material.

**24-25.03A Issue In Defense Of Involuntary Intoxication Or Drugged Condition**

\_\_\_\_\_ *Proposition:* That at the time of the offense, the defendant had substantial capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of law.

**Committee Note**

720 ILCS 5/6-3(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 6-3(b) (1991)).

Give Instruction 24-25.03.

Give this issue as the final proposition in the issues instruction for the offense charged.

Insert in the blank the number of the proposition.

**24-25.04 Definition Of Entrapment**

It is a defense to the charge made against the defendant that he was entrapped, that is, that for the purpose of obtaining evidence against the defendant, he was incited or induced by [(a public officer) (a public employee) (an agent of a public officer) (an agent of a public employee)] to commit an offense.

However, the defendant was not entrapped if he was predisposed to commit the offense and [(a public officer) (a public employee) (an agent of a public officer) (an agent of a public employee)] merely afforded to the defendant the opportunity or facility for committing an offense.

**Committee Note**

720 ILCS 5/7-12 (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 7-12 (1991)), amended by P.A. 89-332, effective August 17, 1995, which added that a defendant was not entrapped if “he was predisposed to commit the offense.”

Give Instruction 24-25.04A.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.

The defense of entrapment is not available to a defendant who denies having committed or participated in the unlawful transaction. *People v. Landwer*, 166 Ill. 2d 475, 211 Ill. Dec. 465, 655 N.E.2d 848 (1995); *People v. Fleming*, 50 Ill. 2d 141, 277 N.E.2d 872 (1971); *People v. Calcaterra*, 33 Ill. 2d 541, 213 N.E.2d 270 (1965).

Use applicable bracketed material.



**24-25.04A Issues In Defense Of Entrapment**

\_\_\_\_\_ *Proposition:* That the defendant was not entrapped.

**Committee Note**

720 ILCS 5/7-12 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 7-12 (1991)).

Give Instruction 24-25.04.

Give this issue as the final proposition in the issues instruction for the offense charged.

Insert in the blank the number of the proposition.

**24-25.05 Alibi****Committee Note**

The Committee recommends that no instruction be given on this subject.

Alibi is not an affirmative defense. *People v. Pearson*, 19 Ill. 2d 609, 169 N.E.2d 252 (1960); *People v. Shelton*, 33 Ill. App. 3d 871, 338 N.E.2d 585 (3d Dist. 1975). See Chapter 38, Section 3-2.

The Committee decided to omit instructions on this subject because of its view that instructions should avoid commenting on particular types of evidence. See *People v. Poe*, 48 Ill. 2d 506, 272 N.E.2d 28 (1971). See also *People v. Therriault*, 42 Ill. App. 3d 876, 1 Ill. Dec. 717, 356 N.E.2d 999 (1st Dist. 1976).

**24-25.06 Use Of Force In Defense Of A Person**

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend [(himself) (another)] against the imminent use of unlawful force.

[However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent [(imminent death or great bodily harm to [(himself) (another)]) (the commission of \_\_\_\_\_)].]

**Committee Note**

720 ILCS 5/7-1, 7-14, and 3-2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 7-1, 7-14, and 3-2 (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See *People v. Kite*, 153 Ill. 2d 40, 44-45, 178 Ill. Dec. 769, 771, 605 N.E.2d 563, 565 (1992); *People v. Everette*, 141 Ill. 2d 147, 152 Ill. Dec. 377, 565 N.E.2d 1295 (1990).

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.

When applicable, insert in the blank the forcible felony.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Sets 27.01 and 27.05.

**24-25.06A Issue In Defense Of Justifiable Use Of Force**

\_\_\_\_\_ *Proposition:* That the defendant was not justified in using the force which he used.

**Committee Note**

720 ILCS 5/7-1 through 7-9 (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 7-1 through 7-9 (1991)).

Give Instruction 24-25.06.

Give this issue as the final proposition in the issues instruction for the offense charged.

Insert in the blank number of the proposition.

For an example of the use of this instruction, see Sample Set § 27.06.



**24-25.07 Use Of Force In Defense Of Dwelling**

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to [(prevent) (terminate)] another's unlawful [(entry into) (attack upon)] a dwelling.

[However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if

[1] the entry is made or attempted in a violent, riotous, or tumultuous manner and he reasonably believes that such force is necessary to prevent an [(assault upon) (offer of personal violence to)] himself or another then in the dwelling.

[or]

[2] he reasonably believes that such force is necessary to prevent the commission of a felony in the dwelling.]

**Committee Note**

720 ILCS 5/7-2, 7-14, and 3-2 (West 2022).

Give Instruction 24–25.06A.

Give this instruction when the trial court has determined there is some evidence as to use of force in defense of a dwelling. *See People v. Kite*, 153 Ill. 2d 40, 44–45, 605 N.E.2d 563, 565 (1992); *People v. Everette*, 141 Ill. 2d 147, 565 N.E.2d 1295 (1990).

A home dweller is not required to wait for unlawful entry to be accomplished before using justifiable force against the invader. *People v. Yanez*, 2022 IL App (3d) 200007, ¶ 29, \_\_\_ N.E.3d \_\_\_. Further, unlike self-defense, defense of a dwelling does not require danger to life or great bodily harm in order to invoke the right to kill. *Id.* (citing *People v. Eatman*, 405 Ill. 491, 497, 91 N.E.2d 387 (1950)). In applying a defense of dwelling defense, the issue is whether the facts and circumstances induced a reasonable belief that the threatened danger, whether real or apparent, existed. *Id.* The reasonableness of a defendant's subjective belief that he was justified in using deadly force is a question of fact for the fact finder. *Id.* at ¶ 30.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**24-25.08 Use Of Force In Defense Of Property**

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to [(prevent) (terminate)] another's [(trespass on) (wrongful interference with)] [(real property other than a dwelling) (personal property)] lawfully [(in his possession) (in the possession of another who is a member of his [(immediate family) (household)]) (in the possession of a person whose property he has a legal duty to protect)].

[However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent the commission of \_\_\_\_\_.]

**Committee Note**

720 ILCS 5/7-3, 7-4, and 3-2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 7-3, 7-4, and 3-2 (1991)).

Give Instruction 24-25.06A.

Give this instruction when the trial court has determined there is some evidence as to use of force in defense of a property such that the issue is properly one for the jury. See *People v. Kite*, 153 Ill. 2d 40, 44-45, 178 Ill. Dec. 769, 771, 605 N.E.2d 563, 565 (1992); *People v. Everette*, 141 Ill. 2d 147, 152 Ill. Dec. 377, 565 N.E.2d 1295 (1990).

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm.

When applicable, insert in the blank the forcible felony.

Use applicable paragraphs and bracketed material.

**24-25.09 Initial Aggressor's Use Of Force**

A person who initially provokes the use of force against himself is justified in the use of force only if

[1] the force used against him is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape the danger other than the use of force which is likely to cause death or great bodily harm to the other person.

[or]

[2] in good faith, he withdraws from physical contact with the other person and indicates clearly to the other person that he desires to withdraw and terminate the use of force, but the other person continues or resumes the use of force.

**Committee Note**

720 ILCS 5/7-4(c), 7-14, and 3-2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 7-4(c), 7-14, and 3-2 (1991)).

See *People v. Barnett*, 48 Ill. App. 3d 121, 5 Ill. Dec. 949, 362 N.E.2d 420 (4th Dist. 1977); *People v. Crue*, 47 Ill. App. 3d 771, 6 Ill. Dec. 1, 362 N.E.2d 430 (4th Dist. 1977).

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Sets 27.01 and 27.05.

**24-25.09X Non-Initial Aggressor—No Duty To Retreat**

A person who has not initially provoked the use of force against himself has no duty to attempt to escape the danger before using force against the aggressor.

**Committee Note**

See *People v. Hughes*, 46 Ill. App. 3d 490, 4 Ill. Dec. 930, 360 N.E.2d 1363 (1st Dist. 1977); *People v. Miller*, 259 Ill. App. 3d 257, 197 Ill. Dec. 1, 630 N.E.2d 1125 (1st Dist. 1994)

Give either 24-25.06 or 24-25.07 or 24-25.08.

In appropriate cases, both Instructions 24-25.09 and 24-25.09X should be given. In other cases only one or the other instruction should be given.



**24-25.10 Forcible Felon Not Entitled To Use Force**

A person is not justified in the use of force if he is [(attempting to commit) (committing) (escaping after the commission of)] \_\_\_\_\_.

**Committee Note**

720 ILCS 5/7-4(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 7-4(a) (1991)).

Insert in the blank the forcible felony committed or attempted.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.05.

**24-25.11 Provocation Of First Force As Excuse For Retaliation**

A person is not justified in the use of force if he initially provokes the use of force against himself with the intent to use that force as an excuse to inflict bodily harm upon the other person.

**Committee Note**

720 ILCS 5/7-4(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 7-4(b) (1991)).

**24-25.12 Peace Officer's Use Of Force In Making Arrest**

A peace officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest or to defend [(himself) (another)] from bodily harm while making the arrest.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent

[1] death or great bodily harm to [(himself) (another)].

[or]

[2] the arrest from being defeated by resistance or escape and the person to be arrested has committed or attempted \_\_\_\_\_ which involves the infliction or threatened infliction of great bodily harm.

[or]

[3] the arrest from being defeated by resistance or escape and the person to be arrested is attempting to escape by use of a deadly weapon or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.]

[A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that such warrant is invalid.]

**Committee Note**

720 ILCS 5/7-5(a) and 2-13 (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 7-5(a) and 2-13 (1991)), as amended by P.A. 84-1426, effective September 24, 1986.

Give Instruction 24-25.06A.

Use the first bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See *People v. Kite*, 153 Ill. 2d 40, 44-45, 178 Ill. Dec. 769, 771, 605 N.E.2d 563, 565 (1992); *People v. Everette*, 141 Ill. 2d 147, 152 Ill. Dec. 377, 565 N.E.2d 1295 (1990). If used, also give Instruction 24-25.15.

Use the final bracketed paragraph when there is some evidence to present the issue to the jury.

Give Instruction 4.08, defining the term "peace officer," and Instruction 4.09, defining the term "penal institution," when appropriate.

See Instructions 24-25.13 and 24-25.14.

See *People v. Taylor*, 53 Ill. App. 3d 810, 11 Ill. Dec. 342, 368 N.E.2d 950 (5th Dist. 1977).

Insert in the blank in paragraph [2] the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**24-25.13 Peace Officer's Use Of Force To Prevent Escape From Custody**

A peace officer who has an arrested person in his custody is justified in the use of any force which he reasonably believes to be necessary to prevent the escape of the arrested person or to defend [(himself) (another)] from bodily harm while preventing the escape.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force

[1] is necessary to prevent death or great bodily harm to [(himself) (another)].

[or]

[2] is necessary to prevent the escape and the person attempting to escape has committed or attempted \_\_\_\_\_.

[or]

[3] is necessary to prevent the escape and the person is attempting to escape by use of a deadly weapon or otherwise indicates that he will endanger human life or inflict bodily harm unless prevented from escaping without delay.]

**Committee Note**

720 ILCS 5/7-5, 7-9, and 2-13 (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 7-5, 7-9, and 2-13 (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See *People v. Kite*, 153 Ill. 2d 40, 44-45, 178 Ill. Dec. 769, 771, 605 N.E.2d 563, 565 (1992); *People v. Everette*, 141 Ill. 2d 147, 152 Ill. Dec. 377, 565 N.E.2d 1295 (1990).

Give Instruction 4.08, defining the term "peace officer," and Instruction 4.09, defining the term "penal institution," when appropriate.

See Instructions 24-25.14 and 24-25.15.

When appropriate, insert in the blank the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**24-25.14 Peace Officer's Use Of Force To Prevent Escape From Penal Institution**

A guard or other peace officer is justified in the use of force, including force likely to cause death or great bodily harm, which he reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in the institution [(under sentence for an offense) (awaiting trial for an offense) (awaiting commitment for an offense)].

**Committee Note**

720 ILCS 5/7-9(b), 2-13, and 2-14 (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 7-9(b), 2-13, and 2-14 (1991)).

Give Instruction 24-25.06A.

Give Instruction 4.08, defining the term “peace officer,” and Instruction 4.09, defining the term “penal institution,” when appropriate.

Give Instruction 24-25.15 when appropriate.

Use applicable bracketed material.

**24-25.15 Definition Of Force Likely To Cause Death Or Great Bodily Harm**

Force which is likely to cause death or great bodily harm includes [(the firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm) (the firing of a firearm at a vehicle in which the person to be arrested is riding)].

**Committee Note**

720 ILCS 5/7-8 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 7-8 (1991)).

Use applicable bracketed material.

**24-25.16 Private Person's Use Of Force In Making Arrest—Not Summoned  
By Peace Officer**

A private person who [(makes) (assists another private person in making)] a lawful arrest need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend [(himself) (another)] from bodily harm while making the arrest.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to [(himself) (another)].]

**Committee Note**

720 ILCS 5/7-5(a) and 7-6(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 7-5(a) and 7-6(a) (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See *People v. Kite*, 153 Ill. 2d 40, 44-45, 178 Ill. Dec. 769, 771, 605 N.E.2d 563, 565 (1992); *People v. Everette*, 141 Ill. 2d 147, 152 Ill. Dec. 377, 565 N.E.2d 1295 (1990).

Give Instruction 24-25.15 when appropriate.

Use applicable bracketed material.

### 24-25.17 Private Person's Use Of Force In Making Arrest—Summoned By Peace Officer

A private person who is summoned or directed by a peace officer to assist him need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest or to defend [(himself) (another)] from bodily harm while making the arrest.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes

[1] that such force is necessary to prevent death or great bodily harm to [(himself) (another)].

[or]

[2] that such force is necessary to prevent the arrest from being defeated by resistance or escape and the person to be arrested has committed or attempted \_\_\_\_\_.

[or]

[3] that such force is necessary to prevent the arrest from being defeated by resistance or escape and the person to be arrested is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.]

[A private person who is summoned or directed by a peace officer to assist in making an arrest which is unlawful, is justified in the use of any force which he would be justified in using if the arrest were lawful, unless he knows that the arrest is unlawful.]

#### Committee Note

720 ILCS 5/7-5(a), 7-6(b), and 2-13 (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 7-5(a), 7-6(b), and 2-13 (1991)).

Give Instruction 24-25.06A.

Give Instruction 24-25.15 when appropriate.

Use the first bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See *People v. Kite*, 153 Ill. 2d 40, 44-45, 178 Ill. Dec. 769, 771, 605 N.E.2d 563, 565 (1992); *People v. Everett*, 141 Ill. 2d 147, 152 Ill. Dec. 377, 565 N.E.2d 1295 (1990).

Use the final bracketed paragraph when there is some evidence to make that paragraph an issue for the jury.

When applicable, insert in the blank the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



**24-25.18 Private Person's Use Of Force To Prevent Escape—Not Summoned By Peace Officer**

A private person who has an arrested person in his custody is justified in the use of any force which he reasonably believes to be necessary to prevent the escape of the arrested person, or to defend [(himself) (another)] from bodily harm while preventing the escape.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to [(himself) (another)].]

**Committee Note**

720 ILCS 5/7-9(a), 7-5(a), and 7-6(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 7-9(a), 7-5(a), and 7-6(a) (1991)).

Give Instruction 24-25.06A.

Use the bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See *People v. Kite*, 153 Ill. 2d 40, 44-45, 178 Ill. Dec. 769, 771, 605 N.E.2d 563, 565 (1992); *People v. Everette*, 141 Ill. 2d 147, 152 Ill. Dec. 377, 565 N.E.2d 1295 (1990).

Give Instruction 24-25.15 when appropriate.

Use applicable bracketed material.

### 24-25.19 Private Person's Use Of Force To Prevent Escape—Summoned By Peace Officer

A private person who is summoned or directed by a peace officer to assist him in preventing the escape of an arrested person is justified in the use of any force which he reasonably believes to be necessary to prevent the escape or to defend [(himself) (another)] from bodily harm while preventing the escape.

[However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes

[1] that such force is necessary to prevent death or great bodily harm to [(himself) (another)].

[or]

[2] that such force is necessary to prevent the escape and the person escaping has committed or attempted \_\_\_\_\_.

[or]

[3] that such force is necessary to prevent the escape and the person is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless prevented from escaping without delay.]

[A private person who is summoned or directed by a peace officer to assist in preventing an escape from an arrest which is unlawful, is justified in the use of any force which he would be justified in using if the arrest were lawful, unless he knows that the arrest is unlawful.]

#### Committee Note

720 ILCS 5/7-5(a), 7-6(b), and 7-9(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 7-5(a), 7-6(b), and 7-9(a) (1991)).

Give Instruction 24-25.06A.

Give Instruction 24-25.15 when appropriate.

Use the first bracketed paragraph when there is some evidence that the force used by the defendant was likely to cause death or great bodily harm. See *People v. Kite*, 153 Ill. 2d 40, 44-45, 178 Ill. Dec. 769, 771, 605 N.E.2d 563, 565 (1992); *People v. Everette*, 141 Ill. 2d 147, 152 Ill. Dec. 377, 565 N.E.2d 1295 (1990).

Use the final bracketed paragraph when there is some evidence to present that issue to the jury.

When applicable, insert in the blank the forcible felony committed or attempted.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**24-25.20 Private Person's Use Of Force In Resisting Arrest**

A person is not authorized to use force to resist an arrest which he knows is being made by a [(peace officer) (private person summoned and directed by a peace officer to make the arrest)], even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

**Committee Note**

720 ILCS 5/7-7(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 7-7(a) (1991)).

Use applicable bracketed material.

**24-25.21 Definition Of Compulsion**

It is a defense to the charge made against the defendant that he acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believed death or great bodily harm would be inflicted upon him if he did not perform the conduct with which he is charged.

**Committee Note**

720 ILCS 5/7-11 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 7-11 (1991)).

Give Instruction 24-25, 21A.

This defense is not available when the charge is murder. *People v. Gleckler*, 82 Ill. 2d 145, 44 Ill. Dec. 483, 411 N.E.2d 849 (1980).

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter.



**24-25.21A Issue In Defense Of Compulsion**

\_\_\_\_\_ *Proposition:* That the defendant did not act under compulsion.

**Committee Note**

720 ILCS 5/7-11 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 7-11 (1991)).

Give Instruction 24-25.21.

Give this issue as the final proposition in the issues instruction for the offense charged.

Insert in the blank the number of the proposition.

**24-25.22 Necessity**

Conduct which would otherwise be an offense is justifiable by reason of necessity if the defendant was without blame in occasioning or developing the situation and reasonably believed that such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct.

**Committee Note**

720 ILCS 5/7-13 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 7-13 (1991)).

Give Instruction 24-25.22A.

Give this instruction when the issue is properly one for the jury. See Introduction to this Chapter in the bound volume.

In a prosecution for the offense of escape, see *People v. Unger*, 66 Ill. 2d 333, 5 Ill. Dec. 848, 362 N.E.2d 319 (1977).

This defense is not available for the offense of unlawful possession of a weapon by a person in custody of the Department of Corrections facilities, as set forth in 720 ILCS 5/24-1.1(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 24-1.1(b) (1991)). See 720 ILCS 5/24-1.1(d) (West 1992).

**24-25.22A Issue In Defense Of Necessity**

\_\_\_\_\_ *Proposition:* That the defendant did not act out of necessity.

**Committee Note**

720 ILCS 5/7-13 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 7-13 (1991)).

Give Instruction 24-25.22.

Give this issue as the final proposition in the issues instruction for the offense charged.

Insert in the blank the number of the proposition.

**24-25.23 Prosecutions Brought Under Exceptions To The Statute Of Limitations Normally Applicable (Before January 1, 2018)**

A prosecution for \_\_\_\_\_ must be commenced within \_\_\_\_\_ after the alleged commission of that offense unless the following exception[s] [(is) (are)] present: \_\_\_\_\_.

The State has the burden of proving beyond a reasonable doubt that the above exception[s] [(is) (are)] present in this case.

**Committee Note**

P.A. 100-434, effective January 1, 2018, amended 720 ILCS 5/3-6 (extended limitations) and 720 ILCS 5/3-7 (periods excluded from limitations) to provide that the State is no longer required to prove exceptions and exclusions to the general statute of limitations (720 ILCS 5/3-5). Previous case law held that exceptions and exclusions were elements that, if applicable, the State had to prove beyond a reasonable doubt. *People v. Morris*, 135 Ill. 2d 540, 554 N.E.2d 150 (1990). The elimination of an element of an offense affects a defendant's substantive rights and cannot apply retroactively. *People v. Holmes*, 292 Ill. App. 3d 855, 860-61 (2d Dist. 1997). As a result, this instruction should continue to be used in cases in which the alleged offense was committed before January 1, 2018, and the court determines an exception or exclusion is a material issue.

720 ILCS 5/3-5, 3-6, 3-7, and 3-8 (West 1999).

Give Instruction 24-25.23A.

Insert in the first blank the name of the offense charged.

Insert in the second blank the applicable statutory period of exception relied upon by the State.

Use applicable bracketed material.



**24-25.23A Issue In Statute Of Limitations Exceptions (Before January 1, 2018)**

\_\_\_\_\_ Proposition: That an exception permitting this prosecution is present in this case.

**Committee Note**

P.A. 100-434, effective January 1, 2018, amended 720 ILCS 5/3-6 (extended limitations) and 720 ILCS 5/3-7 (periods excluded from limitations) to provide that the State is no longer required to prove exceptions and exclusions to the general statute of limitations (720 ILCS 5/3-5). Previous case law held that exceptions and exclusions were elements that, if applicable, the State had to prove beyond a reasonable doubt. *People v. Morris*, 135 Ill. 2d 540, 554 N.E.2d 150 (1990). The elimination of an element of an offense affects a defendant's substantive rights and cannot apply retroactively. *People v. Holmes*, 292 Ill. App. 3d 855, 860-61 (2d Dist. 1997). As a result, this instruction should continue to be used in cases in which the alleged offense was committed before January 1, 2018, and the court determines an exception or exclusion is a material issue.

720 ILCS 5/3-5, 3-6, 3-7, and 3-8 (West 1999).

Give this proposition as the final proposition in the issues instruction for the offense charged.

Give Instruction 24-25.23, and see the Committee Note to that instruction.

Insert in the blank the number of the proposition.

**24-25.23X Prosecutions Brought Under Exceptions To The Statute Of Limitations Normally Applicable (As Of January 1, 2018)**

**Committee Note**

P.A. 100-434, effective January 1, 2018, amended 720 ILCS 5/3-6 (extended limitations) and 720 ILCS 5/3-7 (periods excluded from limitations) to provide that the State is no longer required to prove exceptions and exclusions to the general statute of limitations (720 ILCS 5/3-5). Thus, no instruction on exceptions or exclusions to the statute of limitations should be given in cases in which the alleged offense was committed on or after January 1, 2018.

**24-25.23Y Issue In Statute Of Limitations Exceptions (As Of January 1, 2018)****Committee Note**

P.A. 100-434, effective January 1, 2018, amended 720 ILCS 5/3-6 (extended limitations) and 720 ILCS 5/3-7 (periods excluded from limitations) to provide that the State is no longer required to prove exceptions and exclusions to the general statute of limitations (720 ILCS 5/3-5). Thus, no instruction on exceptions or exclusions to the statute of limitations should be given in cases in which the alleged offense was committed on or after January 1, 2018.

**24-25.24 Definition Of Defense Of Mistake Of Fact**

A defendant's mistake as to a matter of fact is a defense if the mistake shows that the defendant did not have the [(intent) (knowledge) (recklessness)] necessary for the offense charged.

**Committee Note**

720 ILCS 5/4-8(a) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-8(a) (1991)).

Give Instruction 24-25.24A..

Give this instruction when the issue is properly one for the jury. See the Introduction to this Chapter in the bound volume.

In *People v. Crane*, 145 Ill. 2d 520, 165 Ill. Dec. 703, 585 N.E.2d 99 (1991), the Illinois Supreme Court held that when the defendant presented some evidence supporting a mistake of fact defense and requested an instruction on that defense, it was reversible error for the trial court to not instruct the jury on the defendant's mistake of fact defense. The Committee thus decided that this instruction was necessary.

This instruction relates to the general affirmative defense instruction which tracks Section 4-8(a). That section provides as follows:

"A person's . . . mistake as to a matter of [fact] . . . is a defense if it negates the existence of the mental state which [is] an element of the offense."

Select the mental state consistent with the charge.



**24-25.24A Issues In Defense Of Mistake Of Fact**

\_\_\_\_\_ *Proposition:* That the defendant was not mistaken as to a matter of fact that would show he did not have the [(intent) (knowledge) (recklessness)] necessary for the offense charged.

**Committee Note**

720 ILCS 5/4-8(a) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-8(a) (1991)).

Give Instruction 24-25.24.

See Committee Note to Instruction 24-25.24 regarding the Illinois Supreme Court's decision in *People v. Crane*, 145 Ill. 2d 520, 165 Ill. Dec. 703, 585 N.E.2d 99 (1991).

Insert in the blank the number of the proposition.

**24-25.25 Defense To Home Invasion**

It is a defense to the charge of home invasion that the defendant who knowingly enters the dwelling place of another and remains in such dwelling place until he [(knows) (has reason to know)] one or more persons is present [(immediately leaves such premises) (surrenders to the person or persons lawfully present therein)] without [(attempting to cause) (causing)] serious bodily injury to any person present therein.

**Committee Note**

720 ILCS 5/12-11(b) (West 2003) (formerly Ill. Rev. Stat. ch. 38, Sec. 12-11(b)).

Give Instruction 24-25.25A.

Use applicable bracketed material.

**24-25.25A Issue In Defense To Home Invasion**

\_\_\_\_\_ *Proposition:* That the defendant, when he [(knew) (had reason to know)] that one or more persons was present in such dwelling place, did not [(immediately leave such premises) (surrender to the person or persons lawfully present therein)] without [(attempting to cause) (causing)] serious bodily injury to any person present therein.

**Committee Note**

720 ILCS 5/12-11(b) (West 2003) (formerly Ill. Rev. Stat. ch. 38, Sec. 12-11(b)).

Give Instruction 24-25.25.

Use applicable bracketed material.

Give this instruction as the final proposition in the issues instruction for the offense charged.

Insert in the blank the number of the proposition.

**24-25.26 Exemption To Perjury—Contradictory Statements****Committee Note**

720 ILCS 32-2(c) (West 2011) (formerly Ill. Rev. Stat. ch. 38, § 32-2(c) (1991)).

The Committee recommends that no instruction be given on this subject.

Though the statute bars a prosecution where contradictory statements are made in the same continuous trial and the alleged offender admits in that same continuous trial the falsity of a contradictory statement, the decision whether the prosecution is barred is a question of law which should be decided by a trial court. Generally, bars to prosecution (*e.g.*, speedy trial violations) are questions of law for the court, not the jury.



**24-25.27 Defense To Criminal Damage To Property And Arson**

It is a defense to the charge of [(criminal damage to property) (arson)] when the owner of the property or land damaged consented to the damage.

**Committee Note**

*Instruction and Committee Note Approved October 26, 2018*

720 ILCS 5/21-1(c) (West 2018).

Give Instruction 24-25.27A.

**24-25.27A Issues In Defense To Criminal Damage To Property And Arson**

\_\_\_\_\_ *Proposition:* That the owner of the property or land damaged did not consent to the damage.

**Committee Note**

*Instruction and Committee Note Approved October 26, 2018*

720 ILCS 5/21-1(c) (West 2018).

Give Instruction 24-25.27.



## Chapter 26.00

# CONCLUDING INSTRUCTIONS AND FORMS OF VERDICTS

### SYNOPSIS

#### INTRODUCTORY NOTE

#### PART I. GENERAL CONCLUDING INSTRUCTION

#### INTRODUCTORY NOTE

- 26.01 Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Second Degree Murder

#### PART II. FIRST AND SECOND DEGREE MURDER—NO INVOLUNTARY MANSLAUGHTER

- 26.01A Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 26.01B Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 26.01C Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 26.01D Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 26.01E Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 26.01F Concluding Instruction—Jury Is To Be Instructed On First And Second Degree



**Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

**26.01G Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

**26.01H Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

### **PART III. FIRST AND SECOND DEGREE MURDER AND INVOLUNTARY MANSLAUGHTER**

**26.01I Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On Any Other Charge**

**26.01J Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On Some Other Charge Or Charges**

**26.01K Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

**26.01L Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

**26.01M Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

**26.01N Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

**26.01O Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

**26.01P Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

### **PART IV. LESSER INCLUDED OFFENSES**

**26.01Q Concluding Instruction—Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill**

**Verdict—Jury Is Not To Be Instructed On Any Charge Other Than The Greater And Lesser Included Offenses**

- 26.01R** Concluding Instruction—Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Charge Other Than The Greater And Lesser Included Offenses
- 26.01S** Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 26.01T** Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 26.01U** Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 26.01V** Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 26.01W** Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 26.01X** Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

#### **PART V. NO LESSER INCLUDED OFFENSES**

- 26.01Y** Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict
- 26.01Z** Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict
- 26.01AA** Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict
- 26.02** Verdict—Not Guilty
- 26.03** Verdict—Not Guilty By Reason Of Insanity
- 26.04** Verdict—Guilty But Mentally Ill
- 26.05** Verdict—Guilty
- 26.06** Death Penalty Verdicts

- 26.07      Deadlocked Jury Supplemental Instruction**
- 26.08      Suggested Rule 436 Instruction When Admonishing Jurors During Trial**
- 26.09      Suggested Rule 436 Instruction When Sending The Jury Home For The Night  
During Deliberations .**



## INTRODUCTORY NOTE

The instructions in this chapter should be given at the conclusion of the court's charge to the jury.

The Committee is aware of instances where a confused jury has returned logically or legally inconsistent verdicts. (For examples of problems the Committee is seeking to avoid, see *People v. Hoffer*, 106 Ill.2d 186, 88 Ill.Dec. 20, 478 N.E.2d 335 (1985) (guilty of murder, voluntary manslaughter, and involuntary manslaughter); *People v. Spears*, 130 Ill.App.3d 1006, 86 Ill.Dec. 202, 475 N.E.2d 8 (3d Dist. 1985), *judgment affirmed*, 112 Ill.2d 396, 98 Ill.Dec. 9, 493 N.E.2d 1030 (1986) (guilty of attempt murder, armed violence, and reckless conduct); *People v. Coleman*, 131 Ill.App.3d 76, 86 Ill.Dec. 351, 475 N.E.2d 565 (1st Dist. 1985) (guilty of attempt murder and reckless conduct).) To avoid such confusion in future cases, the Committee has expanded these concluding instructions to be given to the jury and has made them more specific depending upon the particular charges to be considered by the jury and the relationship of those charges to each other.

As part of the Committee's plan to avoid jury confusion, the Committee has similarly expanded Chapter 2.00. (See Introductory Note to Chapter 2.00 and Instruction 2.01 *et seq.*) Thus the form of the 2.01 charging instruction should always correlate to the form of the § 26.01 concluding instruction. For example, if Instruction 2.01E is given, then Instruction 26.01E must be given as well.

The Committee is aware that choosing among the 26.01 *et seq.* instructions at first may seem confusing and difficult. However, the Committee decided that having these options available to cover as many fact situations as possible would ultimately prove to be of great benefit to the bench and bar. Were these options not available, counsel and the court would be required in an appropriate case to concoct modifications of those instructions in IPI-Criminal closest to the case at hand. Devising instructions in the midst of a complex, perhaps hard-fought trial is not a desirable course of action. It is far preferable to permit the court and counsel to choose from among the detailed instructions provided by the Committee.

In the 28 instructions that comprise the 26.01 series, the Committee has attempted to provide a particular concluding instruction to meet any factual variation present when the jury is to be instructed about one or more of the following areas: second degree murder, involuntary manslaughter, lesser included offenses, the guilty but mentally ill verdict, and the insanity defense.

Only one instruction of the 26.01 series (and its corresponding partner from the 2.01 series) should be appropriate to any given set of facts. The Committee has attempted to anticipate and include all potential factual situations. If, however, the court determines that the Committee has failed to provide an instruction in the § 26.01 series that is appropriate to the factual situation of the case on trial, the court should then utilize Instruction 26.01 and modify it as may be needed.

In *People v. Reddick*, 123 Ill.2d 184, 122 Ill.Dec. 1, 526 N.E.2d 141 (1988), the Illinois Supreme Court changed how a jury should be instructed when it is to consider both murder and voluntary manslaughter as those offenses were defined prior to P.A.



84-1450, which created the offense of second degree murder. (See Committee Note to Instruction 7.02A.) The Committee believes that the instructions contained in parts II and III of the 26.01 series, dealing with first and second degree murder and involuntary manslaughter in various combinations, are fully applicable and useable to murder-voluntary manslaughter cases being tried under the statute in effect before amendments contained in P.A. 84-1450, with only three slight modifications: (1) any reference in a 26.01 instruction to first degree murder should be changed to murder, (2) any reference to second degree murder should be changed to voluntary manslaughter, and (3) the paragraph from each 26.01 instruction that refers to the defendant's burden of proving that he is guilty of the lesser offense of second degree murder should be deleted entirely. There is no need to substitute any language for the deleted paragraph.

### **Guidelines for Choosing Among the 26.01 Series Instructions**

The § 26.01 series has been divided into five parts to reduce the difficulty of finding the appropriate instruction for use in any given factual setting.

#### **NEW TO THE FOURTH EDITION: THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM**

The Committee has determined that in certain circumstances it would be valuable for the trial court to have the option to provide the alternative jury verdict choices for each charge on a single page. The Committee believes this would be particularly valuable where the jury is instructed as to lesser-included charges.

For example, in cases in which the jury is asked to select only one verdict from among several possible alternatives, the current practice is to present the jury with a separate page for each possible verdict. The trial judge instructs the jury to choose only one of the alternatives. The jury is told to sign only that one form and to leave the other pages blank. All the instructions in Chapter 26 are premised on this use of multiple forms printed on multiple pages.

As an alternative to this system, the Committee suggests that all alternative verdicts could be placed on one page. Jurors would then be told to check off the verdict they have chosen and then sign the form.

For example, assume a jury is faced with issues of first-degree murder and second-degree murder in the case of Arthur Fletcher. (This example is drawn from Sample Set 27.01 that appears in the next chapter.) Under the current system, the jury would receive the three alternative verdicts on three separate pages: one page for "not guilty"; one page for "guilty of first-degree murder"; and one page for "guilty of second-degree murder." The jury is then asked to return only one signed form.

The proposed new system would consolidate these three alternative verdicts on one page. It would read:

"We, the jury, find the defendant:

1. \_\_\_\_\_ Arthur Fletcher not guilty.
2. \_\_\_\_\_ Arthur Fletcher guilty of first degree murder.
3. \_\_\_\_\_ Arthur Fletcher guilty of second degree murder.

Indicate your unanimous verdict by checking only one of the choices above.

[12 lines for the signatures of the Foreperson and eleven other jurors.]”

Throughout the Sample Sets in Chapter 27, an example of an alternative, single page, multiple verdict form is provided whenever applicable.

Please note that the use of this single page verdict form is merely optional. The instructions in Chapter 26 continue to assume the use of a separate page for each alternative verdict.

THEREFORE, IF THE TRIAL COURT DECIDES TO USE THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM, IT WILL BE NECESSARY TO REVISE THE INSTRUCTIONS FROM CHAPTER 26. The instructions should be revised to reflect the fact that the verdict options all appear on one page; that the jury must unanimously agree on one of those options; that the jury should indicate its choice by checking off the appropriate verdict; and that the form should then be signed by the jurors.

**PART I. GENERAL CONCLUDING INSTRUCTION****INTRODUCTORY NOTE**

Instruction 26.01 is the general concluding instruction (with some modifications) that previously appeared in earlier editions of IPI-Criminal. It should be used when none of the 27 other, more specific, instructions from the 26.01 series is applicable.

**26.01 Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Second Degree Murder**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict[s].

Your agreement on a verdict must be unanimous. Your verdict[s] must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of \_\_\_\_\_. You will receive two forms of verdict [as to each defendant]. You will be provided with both a “not guilty” and “guilty” form of verdict [as to each defendant]. From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict form [as to that defendant]. Sign only one verdict form [as to each defendant].

[or]

[2] The defendant[s] [(is) (are)] charged with the offenses of \_\_\_\_\_ and \_\_\_\_\_. You will receive \_\_\_\_\_ forms of verdict. As to each charge [and for each defendant], you will be provided with both a “not guilty” and “guilty” form of verdict. From these two verdict forms with regard to a particular charge, you should select the one verdict form that reflects your verdict on that charge [(as to each defendant) (as to a defendant so charged) ] and sign it as I have stated. Do not write on the other verdict form on that charge [as to that defendant]. Sign only one verdict form on that charge [as to that defendant].

[or]

[3] The defendant[s] [(is) (are)] charged in different ways with the offense of \_\_\_\_\_. You will receive two forms of verdict pertaining to each particular way that the offense of \_\_\_\_\_ is charged. As to each particular way the offense of \_\_\_\_\_ is charged [and as to each defendant], you will be provided with both a “not guilty” and “guilty” form of verdict. From these two verdict forms as to each particular way that the offense of \_\_\_\_\_ is charged, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict form [as to that defendant]. Sign only one verdict form as to each particular way that the offense of \_\_\_\_\_ is charged [as to each defendant].



### Committee Note

Whenever this instruction is given, Instruction 2.01 must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on a lesser offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, or (4) the jury is to be instructed on second degree murder.

The “offenses” named in the blanks should reflect those charges the jury will consider. Do not use this instruction, however, if the jury is to be instructed on a lesser included offense; instead, use one of the instructions from Part III of the 26.01 series (Instructions § 26.01Q through § 26.01X).

See Introductory Note at 26.00.

Use paragraph [1] when there is a single charge. Use paragraph [2] when there are multiple offenses charged.

When a defendant is charged in multiple counts with an offense that can be charged with different elements, paragraph [3] may be used if the court believes its use will assist the jury in deciding the issues. An example would be a defendant charged in three separate counts with aggravated battery based upon his alleged (1) causing great bodily harm, (2) causing bodily harm to a police officer, and (3) committing a battery upon a public way. Each of these charges is called aggravated battery, but each contains an element that must be proved beyond a reasonable doubt that neither of the other charges contains. Accordingly, a court may choose to distinguish on the verdict forms between the ways in which aggravated battery can be committed. If the court so chooses, then the opening sentence of the issues instructions as well as the guilty and not guilty verdict forms should be expanded to distinguish among the different ways a particular charge is before the jury. Examples are the following:

1) “To sustain the charge of aggravated battery *causing great bodily harm*, . . .” (opening clause of an issues instruction); “We, the jury, find the defendant \_\_\_\_\_ not guilty of aggravated battery *causing great bodily harm*” (not guilty verdict form); “We, the jury, find the defendant \_\_\_\_\_ guilty of aggravated battery *causing great bodily harm*” (guilty verdict form).

2) “To sustain the charge of aggravated battery *upon a police officer*, . . .” (opening clause of an issues instruction); “We, the jury, find the defendant \_\_\_\_\_ not guilty of aggravated battery *upon a police officer*” (not guilty verdict form); “We, the jury, find the defendant \_\_\_\_\_ guilty of aggravated battery *upon a police officer*” (guilty verdict form).

3) “To sustain the charge of aggravated battery *upon a public way*, . . .” (opening clause of an issues instruction); “We, the jury, find the defendant \_\_\_\_\_ not guilty of aggravated battery *upon a public way*” (not guilty verdict form); “We, the jury, find the defendant \_\_\_\_\_ guilty of aggravated battery *upon a public way*” (guilty verdict form).

The emphasis in each of the previous examples is added for clarification to point



out the distinguishing language in each example. No emphasis should be present in the actual instructions or verdict forms when they are submitted to the jury.

The Committee wishes to emphasize that distinguishing among the various ways in which a given charge is brought is not required by law. In *People v. Travis*, 170 Ill.App.3d 873, 121 Ill.Dec. 830, 525 N.E.2d 1137 (4th Dist. 1988), the court rejected the argument that such distinctions were mandatory and stated the following: “the best rule is that the jury need only be unanimous with respect to the ultimate question of defendant’s guilt or innocence of the crime charged, and unanimity is not required concerning alternate ways in which the crime can be committed . . .” *Travis*, 170 Ill.App.3d at 890, 525 N.E.2d at 1147, 121 Ill.Dec. at 841. (But see *Unhappy Birthday: Illinois’ “One Good Count” Rule is 160 and Unconstitutional*, 76 Ill.B.J. 604 (1988), in which Professor O’Neill argues that distinguishing among the various ways a charge is brought when the jury deliberates is constitutionally required.) Even though use of paragraph [3] is not mandatory in view of the *Travis* decision, the Committee believes that the court has the discretion to utilize that paragraph whenever the court believes such use would assist the jury.

When multiple offenses are charged and one of the charges is brought in multiple counts with different elements (like the aggravated battery charges discussed above), the court may use either paragraph [1] or paragraph [2], whichever may be applicable, in combination with paragraph [3]. Under these circumstances, the first sentence of paragraph [3] should be amended to read as follows: “The defendant[s] [(is) (are) ] also charged in different ways with the offense of \_\_\_\_\_.”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.03.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

## PART II. FIRST AND SECOND DEGREE MURDER—NO INVOLUNTARY MANSLAUGHTER

### 26.01A Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

Accordingly, you will be provided with three verdict forms [as to each defendant]: “not guilty,” “guilty of first degree murder,” and “guilty of second degree murder.”

From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

#### Committee Note

Whenever this instruction is given, Instruction 2.01A must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed only on first and second degree murder.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is to be instructed on some charge other than first degree murder and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01I.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury

as well as for court and counsel and should be in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.01A.

**IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.**

**Amendment to Committee Note to § 26.01A**

This instruction requires the trial court to provide the jury with a general “not guilty” verdict as well as a “guilty of first degree murder” and “guilty of second degree murder” verdict. There is no such verdict form as “not guilty of second degree murder” under our present statutory scheme. *People v. Parker*, 358 Ill. App. 3d 371, 295 Ill. Dec. 408, 832 N.E.2d 858 (1st Dist. 2005). See the discussion concerning this issue in the Committee Note to Instruction 26.01B.



**26.01B Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

[2] Accordingly, you will be provided with three verdict forms [as to each defendant]: “not guilty of first degree murder,” “guilty of first degree murder,” and “guilty of second degree murder.”

[3] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of \_\_\_\_\_. You will receive two forms of verdict [as to each defendant] as to this charge. You will be provided with both a “not guilty of \_\_\_\_\_”, and a “guilty of \_\_\_\_\_” form of verdict [as to each defendant].

[5] From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign it as I have stated. You should not write at all on the other verdict form pertaining to the charge of \_\_\_\_\_.

**Committee Note**

Whenever this instruction is given, Instruction 2.01B must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on the guilty but mentally ill verdict.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01J.

See Introductory Note at 26.00.



Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate charge that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01R in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01R to read, "The defendant[s] [(is) (are)] also charged with the offense of [greater offense]."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, "not guilty of second degree murder." See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of first degree murder."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.05.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

**26.01C Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty,” “guilty of first degree murder,” “guilty but mentally ill of first degree murder,” “guilty of second degree murder,” and “guilty but mentally ill of second degree murder.”

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

**Committee Note**

Whenever this instruction is given, Instruction 2.01C must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01K.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.



**26.01D Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty of first degree murder,” “guilty of first degree murder,” “guilty but mentally ill of first degree murder,” “guilty of second degree murder,” and “guilty but mentally ill of second degree murder.”

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of \_\_\_\_\_. Accordingly, you will be provided with three forms of verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_. “not guilty of \_\_\_\_\_,” “guilty of \_\_\_\_\_,” and “guilty but mentally ill of \_\_\_\_\_.”

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of \_\_\_\_\_. Only one of these three verdict forms [as to each defendant] is to be signed by you.

**Committee Note**

Whenever this instruction is given, Instruction 2.01D must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used when the jury is to be instructed on the insanity defense.

Do *not* use this instruction if the jury is to be instructed on involuntary



manslaughter; instead, use Instruction 26.01 L.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate charge that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If an additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01T in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01T to read, “The defendant[s] [(is) (are)] also charged with the offense of [greater offense].”

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, “not guilty of second degree murder.” Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder.”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

**26.01E Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

If you find that the State has proved the defendant[s] guilty beyond a reasonable doubt of the offense of first degree murder, you must then decide whether the defendant[s] [(has) (have)] proved by a preponderance of the evidence that [(the defendant) (either or both defendants)] [(is) (are)] guilty of the lesser offense of second degree murder.

Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty,” “not guilty by reason of insanity of first degree murder,” “guilty of first degree murder,” “not guilty by reason of insanity of second degree murder,” and “guilty of second degree murder.”

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

### Committee Note

Whenever this instruction is given, Instruction 2.01E must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01M.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on

the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 103 Ill.Dec. 450, 501 N.E.2d 767 (1st Dist. 1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.



**26.01F Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty of first degree murder,” “not guilty by reason of insanity of first degree murder,” “guilty of first degree murder,” “not guilty by reason of insanity of second degree murder,” and “guilty of second degree murder.”

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of \_\_\_\_\_. Accordingly, you will be provided with three forms of verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_. “not guilty of \_\_\_\_\_,” “not guilty by reason of insanity of \_\_\_\_\_,” and “guilty of \_\_\_\_\_.”

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of \_\_\_\_\_. Only one of these three verdict forms [as to each defendant] is to be signed by you.

**Committee Note**

Whenever this instruction is given, Instruction 2.01F must also be given. This instruction may not be used in conjunction with any other instruction from the § 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used when the jury is to be instructed on the guilty but mentally ill verdict.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01N.



See Introductory Note at § 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 103 Ill.Dec. 450, 501 N.E.2d 767 (1st Dist. 1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty.’” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, “not guilty of second degree murder.” See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder.”

Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate charge that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01V in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01V to read, “The defendant[s] [(is) (are)] also charged with the offense of [greater offense].”

Select a different instruction from the § 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

**26.01G Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty,” “not guilty by reason of insanity of first degree murder,” “guilty of first degree murder,” “guilty but mentally ill of first degree murder,” “not guilty by reason of insanity of second degree murder,” “guilty of second degree murder,” and “guilty but mentally ill of second degree murder.”

From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

**Committee Note**

Whenever this instruction is given, Instruction 2.01G must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used when the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01O.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.04B.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.



**26.01H Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty of first degree murder,” “not guilty by reason of insanity of first degree murder,” “guilty of first degree murder,” “guilty but mentally ill of first degree murder,” “not guilty by reason of insanity of second degree murder,” “guilty of second degree murder,” and “guilty but mentally ill of second degree murder.”

[3] From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of \_\_\_\_\_. Accordingly, you will be provided with four verdict forms [as to each defendant] pertaining to the charge of \_\_\_\_\_. “not guilty of \_\_\_\_\_,” “not guilty by reason of insanity of \_\_\_\_\_,” “guilty of \_\_\_\_\_,” and “guilty but mentally ill of \_\_\_\_\_.”

[5] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of \_\_\_\_\_. Only one of these four verdict forms [as to each defendant] is to be signed by you.

**Committee Note**

Whenever this instruction is given, Instruction 2.01H must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury



is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 26.01P.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to first degree murder and second degree murder.

Paragraphs [4] and [5] should be repeated for each separate offense that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge other than first and second degree murder about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [4] and [5]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01X in place of paragraphs [4] and [5], modifying the first sentence of paragraph [1] of Instruction 26.01X to read, "The defendant[s] [(is) (are)] also charged with the offense of [greater offense]."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as, "not guilty of second degree murder." See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of first degree murder."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

### **PART III. FIRST AND SECOND DEGREE MURDER AND INVOLUNTARY MANSLAUGHTER**

#### **26.01I Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On Any Other Charge**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

Accordingly, you will be provided with four verdict forms [as to each defendant]: “not guilty,” “guilty of first degree murder,” “guilty of second degree murder,” and “guilty of involuntary manslaughter.”

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

At the conclusion of your deliberations, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

#### **Committee Note**

Whenever this instruction is given, Instruction 2.01 I must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on first degree murder, second degree murder, and involuntary manslaughter. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), § 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, (3) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter, or (4) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

See Sample Set 27.06.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.



**26.01J Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On Some Other Charge Or Charges**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

[2] Accordingly, you will be provided with four verdict forms [as to each defendant]: “not guilty of first degree murder and not guilty of involuntary manslaughter,” “guilty of first degree murder,” “guilty of second degree murder,” and “guilty of involuntary manslaughter.”

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[7] The defendant[s] [(is) (are)] also charged with the offense of \_\_\_\_\_. Accordingly, you will receive two verdict forms [as to each defendant] as to this charge. You will be provided with both a “not guilty of \_\_\_\_\_” and a “guilty of \_\_\_\_\_” verdict form [as to each defendant].

[8] From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign



it as I have stated. Do not write on the other verdict form pertaining to the charge of \_\_\_\_\_. Sign only one verdict form [as to each defendant] pertaining to the charge of \_\_\_\_\_.

#### Committee Note

Whenever this instruction is given, Instruction 2.01J must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is *not* to be instructed on first degree murder, second degree murder *and* involuntary manslaughter.

See Introductory Note at 26.00.

Paragraphs [1] through [6] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [7] and [8] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [7] and [8]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01R in place of paragraphs [7] and [8], modifying the first sentence of paragraph [1] of Instruction 26.01R to read, "The defendant[s] [(is) (are) ] also charged with the offense of [greater offense]."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as "not guilty of second degree murder." See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of

first degree murder and not guilty of involuntary manslaughter.”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

**26.01K Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty,” “guilty of first degree murder,” “guilty but mentally ill of first degree murder,” “guilty of second degree murder,” “guilty but mentally ill of second degree murder,” “guilty of involuntary manslaughter,” and “guilty but mentally ill of involuntary manslaughter.”

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

If you find the defendant is guilty of any one of these offenses, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].



### Committee Note

Whenever this instruction is given, Instruction 2.01K must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on the guilty but mentally ill verdict. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01J and 24-25.01K.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter, or (3) the jury is *not* to be instructed on first degree murder, second degree murder *and* involuntary manslaughter.

See Introductory Note at 26.00.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.



**26.01L Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty of first degree murder and not guilty of involuntary manslaughter,” “guilty of first degree murder,” “guilty but mentally ill of first degree murder,” “guilty of second degree murder,” “guilty but mentally ill of second degree murder,” “guilty of involuntary manslaughter,” and “guilty but mentally ill of involuntary manslaughter.”

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] If you find the defendant is guilty of any one of these three offenses, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

[7] From these seven verdict forms, you should select the one verdict form that

reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[8] The defendant[s] [(is) (are) ] also charged with the offense of \_\_\_\_\_. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of \_\_\_\_\_. “not guilty of \_\_\_\_\_,” “guilty of \_\_\_\_\_,” and “guilty but mentally ill of \_\_\_\_\_.”

[9] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of \_\_\_\_\_. Sign only one of these three verdict forms [as to each defendant].

#### Committee Note

Whenever this instruction is given, Instruction 2.01L must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01J and 24-25.01K.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Paragraphs [1] through [7] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [8] and [9] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [8] and [9]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01T in place of paragraphs [8] and [9], modifying the first sentence of paragraph [1] of Instruction

26.01T to read, “The defendant[s] [(is) (are) ] also charged with the offense of \_\_\_\_\_ [greater offense].”

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as “not guilty of second degree murder.” See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder and not guilty of involuntary manslaughter.”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.



**26.01M Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty,” “not guilty by reason of insanity of first degree murder,” “guilty of first degree murder,” “not guilty by reason of insanity of second degree murder,” “guilty of second degree murder,” “not guilty by reason of insanity of involuntary manslaughter,” and “guilty of involuntary manslaughter.”

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

If you find the defendant is guilty of any one of these offenses, you should then go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].



### Committee Note

Whenever this instruction is given, Instruction 2.01M must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on the insanity defense. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01E and 24-25.01G.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on any charge other than first degree murder, second degree murder, and involuntary manslaughter, or (3) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 103 Ill.Dec. 450, 501 N.E.2d 767 (1st Dist. 1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

**26.01N Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty of first degree murder and not guilty of involuntary manslaughter,” “not guilty by reason of insanity of first degree murder,” “guilty of first degree murder,” “not guilty by reason of insanity of second degree murder,” “guilty of second degree murder,” “not guilty by reason of insanity of involuntary manslaughter,” and “guilty of involuntary manslaughter.”

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] If you find the defendant is guilty of one of these three offenses, you should go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

[7] From these seven verdict forms, you should select the one verdict form that



reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[8] The defendant[s] [(is) (are) ] also charged with the offense of \_\_\_\_\_. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of \_\_\_\_\_. “not guilty of \_\_\_\_\_,” “not guilty by reason of insanity of \_\_\_\_\_,” and “guilty of \_\_\_\_\_.”

[9] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of \_\_\_\_\_. Sign only one of these three verdict forms [as to each defendant].

#### Committee Note

Whenever this instruction is given, Instruction 2.01N must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01E and 24-25.01G.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 103 Ill.Dec. 450, 501 N.E.2d 767 (1st Dist. 1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Paragraphs [1] through [7] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [8] and [9] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other

than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [8] and [9]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01V in place of paragraphs [8] and [9], modifying the first sentence of paragraph [1] of Instruction 26.01V to read, "The defendant[s] [(is) (are) ] also charged with the offense of [greater offense]."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." Under the present statutory scheme concerning homicide offenses, there can be no such verdict as "not guilty of second degree murder." See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of "not guilty of first degree murder and not guilty of involuntary manslaughter."

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendant are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.



**26.010 Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

Accordingly, you will be provided with ten verdict forms [as to each defendant]: “not guilty,” “not guilty by reason of insanity of first degree murder,” “guilty of first degree murder,” “guilty but mentally ill of first degree murder,” “not guilty by reason of insanity of second degree murder,” “guilty of second degree murder,” “guilty but mentally ill of second degree murder,” “not guilty by reason of insanity of involuntary manslaughter,” “guilty of involuntary manslaughter,” and “guilty but mentally ill of involuntary manslaughter.”

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

If you find the defendant is guilty of any one of these offenses, you should then go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

If you find the defendant has not proved that he is not guilty by reason of insanity, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

From these ten verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other nine verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

### Committee Note

Whenever this instruction is given, Instruction 2.01O must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on the guilty but mentally ill verdict. Accordingly, this instruction is to be used only in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01F and 24-25.01H.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on any charge other than first degree murder, second degree murder, and involuntary manslaughter, or (2) the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Select a different instruction from the § 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.



**26.01P Concluding Instruction—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

[2] Accordingly, you will be provided with ten verdict forms [as to each defendant]: “not guilty of first degree murder and not guilty of involuntary manslaughter,” “not guilty by reason of insanity of first degree murder,” “guilty of first degree murder,” “guilty but mentally ill of first degree murder,” “not guilty by reason of insanity of second degree murder,” “guilty of second degree murder,” “guilty but mentally ill of second degree murder,” “not guilty by reason of insanity of involuntary manslaughter,” “guilty of involuntary manslaughter,” and “guilty but mentally ill of involuntary manslaughter.”

[3] During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

[4] If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

[5] Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

[6] If you find the defendant is guilty of any one of these three offenses, you should

then go on with your deliberations to decide whether the defendant is not guilty by reason of insanity of that offense.

[7] If you find the defendant has not proved that he is not guilty by reason of insanity, you should then go on with your deliberations to decide whether the defendant is guilty but mentally ill of that offense.

[8] From these ten verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other nine verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

[9] The defendant[s] [(is) (are) ] also charged with the offense of \_\_\_\_\_. Accordingly, you will be provided with four verdict forms [as to each defendant] pertaining to the charge of \_\_\_\_\_. "not guilty of \_\_\_\_\_," "not guilty by reason of insanity of \_\_\_\_\_," "guilty of \_\_\_\_\_," and "guilty but mentally ill of \_\_\_\_\_."

[10] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of \_\_\_\_\_. Sign only one of these four verdict forms [as to each defendant].

### Committee Note

Whenever this instruction is given, Instruction 2.01P must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, (4) the jury is to be instructed on the guilty but mentally ill verdict, and (5) the jury is to be instructed on some other charge or charges. Accordingly, this instruction is to be used in conjunction with either Instruction 7.04X (issues where jury instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter), 7.06X (issues where jury instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter), or 7.06Y (issues where jury instructed on first degree murder, second degree murder (both provocation and belief in justification), and involuntary manslaughter).

See also Instructions 24-25.01F and 24-25.01H.

This instruction should *not* be used if the jury is *not* to be instructed on first degree murder, second degree murder, *and* involuntary manslaughter.

See Introductory Note at 26.00.

Paragraphs [1] through [8] should refer only to first degree murder, second degree murder, and involuntary manslaughter.

Paragraphs [9] and [10] should be repeated for each separate charge upon which the jury is to be instructed. Insert in the blanks in those paragraphs the charge other



than first and second degree murder and involuntary manslaughter about which the jury is to be instructed. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use paragraphs [9] and [10]; instead, use paragraphs [1], [2], and [3] of Instruction 26.01X in place of paragraphs [9] and [10], modifying the first sentence of paragraph [1] of Instruction 26.01X to read, “The defendant[s] [(is) (are)] also charged with the offense of [greater offense].”

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder and not guilty of second degree murder.” Under the present statutory scheme concerning homicide offenses, there can be no such verdict as “not guilty of second degree murder.” See Sections 9-1 and 9-2. Only after the State has first proved the defendant guilty of first degree murder may the jury consider whether the defendant has met his burden of proving the existence of a mitigating factor to reduce his crime to the lesser offense of second degree murder. Thus, a finding by the jury that the defendant is not guilty of first degree murder bars the jury from considering second degree murder at all. Accordingly, the jury need be provided only with a verdict form of “not guilty of first degree murder and not guilty of involuntary manslaughter.”

Select a different instruction from the § 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

## PART IV. LESSER INCLUDED OFFENSES

### 26.01Q Concluding Instruction—Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Charge Other Than The Greater And Lesser Included Offenses

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] [also] charged with the offense of \_\_\_\_\_. Under the law, a person charged with [greater offense] may be found (1) not guilty [of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

[2] Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of [greater offense] “not guilty [of [greater offense] and not guilty of [lesser offense]”; “guilty of [greater offense],” and “guilty of [lesser offense].”

[3] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[5] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

### Committee Note

Whenever this instruction is given, Instruction 2.01Q must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on one or more charges which include a lesser offense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on any charge other than the greater and the lesser included offenses, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, or (4) the jury is to be instructed on second degree murder.



This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do not use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Repeat paragraphs [1], [2], [3] and either [4] or [5] for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word “also” in paragraph [1] for each additional charge, and then also include the bracketed words “of [greater offense] and not guilty of [lesser offense]” in paragraphs [1] and [2] for all the charges, inserting the greater and lesser included offenses where indicated.

Paragraph [4] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. See *People v. Towns*, 157 Ill.2d 90, 191 Ill.Dec. 24, 623 N.E.2d 269 (1993). By definition, the jury should not be able to find that the State has proved the defendant guilty of both the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 88 Ill.Dec. 20, 478 N.E.2d 335 (1985); see also 720 ILCS 5/2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [5] should be given whenever paragraph [4] is not to be used. Paragraphs [4] and [5] are mutually exclusive. Paragraph [5] explains to the jury that a defendant *cannot* be guilty of both the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 147 Ill.Dec. 793, 559 N.E.2d 1133 (4th Dist.1990). “Greater offense” in paragraph [5] means that offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [5] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clauses in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being

jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the codefendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.



**26.01R Concluding Instruction—Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Charge Other Than The Greater And Lesser Included Offenses**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] ((is) (are) also) charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

[2] Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of [greater offense]: “not guilty of [greater offense] and not guilty of [lesser offense],” “guilty of [greater offense],” and “guilty of [lesser offense].”

[3] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one of these verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign verdict form finding the defendant guilty of [lesser offense].]

[5] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

[6] The defendant[s] [(is) (are)] also charged with the offense of \_\_\_\_\_. You will receive two forms of verdict [as to each defendant] as to this charge. You will be provided with both a “not guilty of \_\_\_\_\_” and a “guilty of \_\_\_\_\_” form of verdict [as to each defendant].

[7] From these two verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign it as I have stated. You should not write at all on the other verdict form pertaining to the charge of \_\_\_\_\_.

**Committee Note**

Whenever this instruction is given, Instruction 2.01R must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on one or more charges which include a lesser offense and (2) the jury is also to be instructed on some other charge or charges.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder, involuntary manslaughter, and some other charge or charges as well.

See Introductory Note at 26.00.

This instruction may have to be repeated for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the codefendants instruction should be similarly modified.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses. They should not refer at all to the charge(s) set forth in paragraphs [6] and [7].

*Repeat paragraphs [1], [2], [3] and either [4] or [5] for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word "also" in paragraph [1] for each additional charge.*

Paragraphs [6] and [7] should be repeated for each separate charge that the jury is to be instructed upon, other than the greater and lesser included offenses.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clauses in which the blank **entitled [lesser offense]** appears should be repeated for each lesser included offense to go before the jury.

The terms "lesser offense" and "greater offense" which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Paragraph [4] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. See *People v. Towns*, 157 Ill.2d 90, 191 Ill.Dec. 24, 623 N.E.2d 269 (1993). By definition, the jury should not be able to



find that the State has proved the defendant guilty of both the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 88 Ill.Dec. 20, 478 N.E.2d 335 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [5] should be given whenever paragraph [4] is not to be used. Paragraphs [4] and [5] are mutually exclusive. Paragraph [5] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 147 Ill.Dec. 793, 559 N.E.2d 1133 (4th Dist. 1990). “Greater offense” in paragraph [5] means that offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [5] means the offense requiring proof that the defendant acted recklessly.

Select a different instruction from the 2601 series for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the codefendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set § 27.07.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

**26.01S Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense]; or (5) guilty but mentally ill of [lesser offense].

Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty,” “guilty of [greater offense],” “guilty but mentally ill of [greater offense],” “guilty of [lesser offense],” and “guilty but mentally ill of [lesser offense].”

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[1] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[2] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

**Committee Note**

Whenever this instruction is given, Instruction 2.01S must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on any charge other than the greater and the lesser included offenses, or (3) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree



murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraph [1] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 88 Ill.Dec. 20, 478 N.E.2d 335 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [2] should be given whenever paragraph [1] is not to be used. Paragraphs [1] and [2] are mutually exclusive. Paragraph [2] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 147 Ill.Dec. 793, 559 N.E.2d 1133 (4th Dist. 1990). “Greater offense” in paragraph [2] means the offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [2] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

**26.01T Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense]; or (5) guilty but mentally ill of [lesser offense].

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty of [greater offense] and not guilty of [lesser offense],” “guilty of [greater offense],” “guilty but mentally ill of [greater offense],” “guilty of [lesser offense],” and “guilty but mentally ill of [lesser offense].”

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of \_\_\_\_\_. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of \_\_\_\_\_. “not guilty of \_\_\_\_\_,” “guilty of \_\_\_\_\_,” and “guilty but mentally ill of \_\_\_\_\_.”

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign it as I have stated. Do not write on the other verdict forms pertaining to the charge of \_\_\_\_\_. Sign only one of these three verdict forms [as to each defendant].

[6] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense] you should select the verdict form finding the defendant guilty of [lesser offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[7] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

**Committee Note**

Whenever this instruction is given, Instruction 2.01T must also be given. This



instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses.

Paragraphs [4] and [5] should be repeated for each separate offense upon which the jury is to be instructed other than the greater and lesser included offenses.

Paragraph [6] should *not* be given when the lesser included offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Section 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. See *People v. Towns*, 157 Ill.2d 90, 191 Ill.Dec. 24, 623 N.E.2d 269 (1993). By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 88 Ill.Dec. 20, 478 N.E.2d 335 (1985); see also Section 2-9, defining the term "included offense." Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [7] should be given whenever paragraph [6] is not to be used. Paragraphs [6] and [7] are mutually exclusive. Paragraph [7] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 147 Ill.Dec. 793, 559 N.E.2d 1133 (4th Dist. 1990). "Greater offense" in paragraph [7] means the offense requiring proof of intentional or knowing conduct by the defendant. "Lesser offense" in paragraph [7] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a verdict form.

Insert in the blanks as indicated a lesser included offense as to which the jury will



receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The bracketed terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instructions submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses are included to provide clarity for the jury as well as for court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

**26.01U Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty,” “not guilty by reason of insanity of [greater offense],” “guilty of [greater offense],” “not guilty by reason of insanity of [lesser offense],” and “guilty of [lesser offense].”

From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[1] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[2] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

**Committee Note**

Whenever this instruction is given, Instruction 2.01U must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on any charge other than the greater and lesser included offenses, or (3) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree

murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraph [1] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 88 Ill.Dec. 20, 478 N.E.2d 335 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [2] should be given whenever paragraph [1] is not to be used. Paragraphs [1] and [2] are mutually exclusive. Paragraph [2] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 147 Ill.Dec. 793, 559 N.E.2d 1133 (4th Dist. 1990). “Greater offense” in paragraph [2] means the offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [2] means the offense requiring proof that the defendant acted recklessly.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 103 Ill.Dec. 450, 501 N.E.2d 767 (1st Dist. 1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank **entitled [lesser offense]** appears should be repeated for each lesser included offense to go before the jury.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2)



the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

**IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.**



**26.01V Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

[2] Accordingly, you will be provided with five verdict forms [as to each defendant]: “not guilty of [greater offense] and [lesser offense],” “not guilty by reason of insanity of [greater offense],” “guilty of [greater offense],” “not guilty by reason of insanity of [lesser offense],” and “guilty of [lesser offense].”

[3] From these five verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other four verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of \_\_\_\_\_. Accordingly, you will be provided with three verdict forms [as to each defendant] pertaining to the charge of \_\_\_\_\_. “not guilty of \_\_\_\_\_,” “not guilty by reason of insanity of \_\_\_\_\_,” and “guilty of \_\_\_\_\_.”

[5] From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of \_\_\_\_\_. Only one of these three verdict forms [as to each defendant] is to be signed by you.

[6] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[7] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

### Committee Note

Whenever this instruction is given, Instruction 2.01V must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series. This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 103 Ill.Dec. 450, 501 N.E.2d 767 (1st Dist. 1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses.

Paragraphs [4] and [5] should be repeated for each separate offense that the jury is to be instructed upon. Insert in the blanks in those paragraphs the charge[s] other than the greater and lesser included offenses about which the jury is to be instructed.

Paragraph [6] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 88 Ill.Dec. 20, 478 N.E.2d 335 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [7] should be given whenever paragraph [6] is not to be used. Paragraphs [6] and [7] are mutually exclusive. Paragraph [7] explains to the jury



that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 147 Ill.Dec. 793, 559 N.E.2d 1133 (4th Dist. 1990). “Greater offense” in paragraph [7] means the offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [7] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

**26.01W Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty,” “not guilty by reason of insanity of [greater offense],” “guilty of [greater offense],” “guilty but mentally ill of [greater offense],” “not guilty by reason of insanity of [lesser offense],” “guilty of [lesser offense],” and “guilty but mentally ill of [lesser offense].”

From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[1] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[2] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]

**Committee Note**

Whenever this instruction is given, Instruction 2.01W must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is not to be instructed on any charge other than the greater or lesser included offenses.

This instruction should *not* be used under either of the following circumstances:



(1) the jury is to be instructed on any charge other than the greater and lesser offenses, or (2) the jury is to be instructed on second degree murder.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do *not* use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraph [1] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 88 Ill.Dec. 20, 478 N.E.2d 335 (1985), *cert. denied*, 474 U.S. 847, 106 S.Ct. 139, 88 L.Ed.2d 114 (1985); see also Section 2-9, defining the term “included offense.” Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [2] should be given whenever paragraph [1] is not to be used. Paragraphs [1] and [2] are mutually exclusive. Paragraph [2] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 147 Ill.Dec. 793, 559 N.E.2d 1133 (4th Dist. 1990). “Greater offense” in paragraph [2] means the offense requiring proof of intentional or knowing conduct by the defendant. “Lesser offense” in paragraph [2] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .”

Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

**26.01X Concluding Instruction—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of [greater offense]. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

[2] Accordingly, you will be provided with seven verdict forms [as to each defendant]: “not guilty of [greater offense] and [lesser offense],” “not guilty by reason of insanity of [greater offense],” “guilty of [greater offense],” “guilty but mentally ill of [greater offense],” “not guilty by reason of insanity of [lesser offense],” “guilty of [lesser offense],” and “guilty but mentally ill of [lesser offense].”

[3] From these seven verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other six verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

[4] The defendant[s] [(is) (are)] also charged with the offense of \_\_\_\_\_. Accordingly, you will be provided with four verdict forms [as to each defendant] pertaining to the charge of \_\_\_\_\_. “not guilty of \_\_\_\_\_,” “not guilty by reason of insanity of \_\_\_\_\_,” “guilty of \_\_\_\_\_,” and “guilty but mentally ill of \_\_\_\_\_.”

[5] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] pertaining to the charge of \_\_\_\_\_ and sign it as I have stated. You should not write at all on the other verdict forms pertaining to the charge of \_\_\_\_\_. Only one of these four verdict forms [as to each defendant] is to be signed by you.

[6] [If you find the State has proved the defendant guilty of both [greater offense] and [lesser offense], you should select the verdict form finding the defendant guilty of [greater offense] and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of [lesser offense].]

[7] [Under the law, the defendant cannot be guilty of [greater offense] and [lesser offense]. Accordingly, if you find the defendant guilty of [greater offense], that verdict would mean that the defendant is not guilty of [lesser offense]. Likewise, if you find the defendant guilty of [lesser offense], that verdict would mean that the defendant is not guilty of [greater offense].]



### Committee Note

Whenever this instruction is given, Instruction 2.01X must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges.

This instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter. Do not use this instruction when the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] should refer only to the greater and lesser included offenses.

Paragraphs [4] and [5] should be repeated for each separate offense that the jury is to be instructed upon, other than the greater and lesser included offenses.

Paragraph [6] should *not* be given when the lesser offense has the less culpable mental state of recklessness. One example of such a situation is when aggravated battery (greater offense) is charged under Section 12-4, requiring proof of intentional or knowing conduct by the defendant, and reckless conduct (lesser offense) is charged under Section 12-5, requiring proof only that the defendant acted recklessly. Another example is when first degree murder (greater offense) is charged under Sections 9-1(a)(1) or (a)(2), requiring proof of intentional or knowing conduct by the defendant, and involuntary manslaughter (lesser offense) is charged under Section 9-3, requiring proof only that the defendant acted recklessly. By definition, the jury should not be able to find that the State has proved the defendant guilty of *both* the greater and lesser offenses in these examples, and it should not be given an instruction that implies it could do so. See *People v. Hoffer*, 106 Ill.2d 186, 88 Ill.Dec. 20, 478 N.E.2d 335 (1985); see also Section 2-9, defining the term "included offense." Furthermore, when the jury has found the defendant to have acted with the less culpable mental state of recklessness, it would be error for the court to tell the jury to nonetheless return a guilty verdict on the greater offense if the jury had somehow also been able to conclude that the defendant was also guilty of the greater offense because he had acted intentionally or knowingly.

Paragraph [7] should be given whenever paragraph [6] is not to be used. Paragraphs [6] and [7] are mutually exclusive. Paragraph [7] explains to the jury that a defendant *cannot* be guilty of *both* the greater offense and the lesser offense. See *People v. Summers*, 202 Ill.App.3d 1, 147 Ill.Dec. 793, 559 N.E.2d 1133 (4th Dist. 1990). "Greater offense" in paragraph [7] means the offense requiring proof of intentional or knowing conduct by the defendant. "Lesser offense" in paragraph [7] means the offense requiring proof that the defendant acted recklessly.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will



receive a verdict form. If the jury is to be instructed on more than one lesser included offense, then the clause in which the blank entitled [lesser offense] appears should be repeated for each lesser included offense to go before the jury.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE “INTRODUCTIONS” TO CHAPTER 26 AND CHAPTER 27.

**PART V. NO LESSER INCLUDED OFFENSES****26.01Y Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of \_\_\_\_\_. Under the law, a person charged with \_\_\_\_\_ may be found (1) not guilty; or (2) not guilty by reason of insanity of \_\_\_\_\_; or (3) guilty of \_\_\_\_\_.

[2] Accordingly, you will be provided with three verdict forms [as to each defendant]: “not guilty,” “not guilty by reason of insanity of \_\_\_\_\_,” and “guilty of \_\_\_\_\_.”

From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one of these verdict forms [as to each defendant].

**Committee Note**

Whenever this instruction is given, Instruction 2.01Y must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on a lesser included offense, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

The Committee takes no position on the question of whether the special verdict form of guilty but mentally ill is required whenever the jury is to be instructed on the insanity defense. See *People v. Gurga*, 150 Ill.App.3d 158, 103 Ill.Dec. 450, 501 N.E.2d 767 (1st Dist. 1986), for the proposition that “under appropriate facts, a defendant has a right to a judgment of ‘guilty but mentally ill’ instead of ‘guilty’.” *Gurga*, 150 Ill.App.3d at 167, 501 N.E.2d at 773, 103 Ill.Dec. at 456.

Paragraphs [1] and [2] must be repeated for each separate charge that the jury is to be instructed upon. When repeating paragraph [1], modify the first sentence to read, “The defendant[s] [(is) (are)] also charged with . . . .”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the

insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.



**26.01Z Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict**

When you retire to the jury room you first will elect one your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of \_\_\_\_\_. Under the law, a person charged with \_\_\_\_\_ may be found (1) not guilty; or (2) guilty of \_\_\_\_\_; or (3) guilty but mentally ill of \_\_\_\_\_.

[2] Accordingly, you will be provided with three verdict forms [as to each defendant]: “not guilty,” “guilty of \_\_\_\_\_,” and “guilty but mentally ill of \_\_\_\_\_.”

From these three verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other two verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

**Committee Note**

Whenever this instruction is given, Instruction 2.01Z must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on second degree murder.

Do *not* use this instruction if the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

This instruction may have to be repeated for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Paragraphs [1] and [2] must be repeated for each separate charge that the jury is to be instructed upon. When repeating paragraph [1], modify the first sentence to read, “The defendant[s] [(is) (are)] also charged with . . .”

Insert in the blanks all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.



Select a different instruction from the § 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . . ." Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

**26.01AA Concluding Instruction—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

[1] The defendant[s] [(is) (are)] charged with the offense of \_\_\_\_\_. Under the law, a person charged with \_\_\_\_\_ may be found (1) not guilty of \_\_\_\_\_; or (2) not guilty by reason of insanity of \_\_\_\_\_; or (3) guilty of \_\_\_\_\_; or (4) guilty but mentally ill of \_\_\_\_\_.

[2] Accordingly, you will be provided with four verdict forms [as to each defendant]: “not guilty,” “not guilty by reason of insanity of \_\_\_\_\_,” “guilty of \_\_\_\_\_,” and “guilty but mentally ill of \_\_\_\_\_.”

[3] From these four verdict forms, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other three verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

**Committee Note**

Whenever this instruction is given, Instruction 2.01AA must also be given. This instruction may not be used in conjunction with any other instruction from the 2.01 series.

This instruction should be used whenever (1) the jury is to be instructed on the insanity defense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is not to be instructed on a lesser included offense, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 26.00.

Paragraphs [1], [2], and [3] must be repeated for each separate charge that the jury is to be instructed upon. When repeating paragraph [1], modify the first sentence to read, “The defendant[s] [(is) (are)] also charged with . . .”

Select a different instruction from the 26.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury

as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.04A.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION MUST BE REVISED. SEE "INTRODUCTIONS" TO CHAPTER 26 AND CHAPTER 27.

26.02 Verdict—Not Guilty

We, the jury, find the defendant \_\_\_\_\_ not guilty [of \_\_\_\_\_].

\_\_\_\_\_  
Foreperson  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Committee Note

A general not guilty verdict form should generally be used, and must be used in certain situations. (See Instructions 26.01A, 26.01C, 26.01E, 26.01G, 26.01I, 26.01K, 26.01M, 26.01O, 26.01Q, 26.01S, 26.01U, 26.01W, 26.01Y, 26.01Z, and 26.01AA.) Specific not guilty verdict forms, however, must be used in certain other situations. (See Instructions 26.01B, 26.01D, 26.01F, 26.01H, 26.01J, 26.01L, 26.01N, 26.01P, 26.01R, 26.01T, 26.01V, and 26.01X.) In all cases, the form of the not guilty verdict should follow the directions contained in an applicable instruction from the 26.01 series.

When a specific not guilty verdict form is used, the title of each offense under consideration by the jury for a possible not guilty verdict should be identical to the title of that offense as set forth in each issues instruction.

The opening sentence of the issues instruction(s) as well as the guilty and not guilty verdict forms may be expanded in appropriate cases to distinguish among the different ways a particular charge is before the jury. See Committee Note to Instruction 26.01.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Sets 27.01 through 27.07.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION WILL NOT BE USED.



### 26.03 Verdict—Not Guilty By Reason Of Insanity

We, the jury, find the defendant \_\_\_\_\_ not guilty by reason of insanity of

---

## Foreperson

### Committee Note

In all cases, the title of each offense under consideration by the jury for a possible verdict of not guilty by reason of insanity should be identical to the title of that offense as set forth in each issues instruction.

A not guilty by reason of insanity verdict must always be specific as to the charge to which it pertains; there can be no general verdict of not guilty by reason of insanity.

See Committee Note to Instruction 26.01.

For an example of the use of this instruction, see Sample Sets 27.04A and 27.04B.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION WILL NOT BE USED.

**26.04 Verdict—Guilty But Mentally Ill**

We, the jury, find the defendant \_\_\_\_\_ guilty but mentally ill of \_\_\_\_\_.

\_\_\_\_\_  
Foreperson  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Committee Note**

In all cases, the title of each offense under consideration by the jury for a possible guilty but mentally ill verdict should be identical to the title of that offense as set forth in each issues instruction.

See Committee Note to Instruction 26.01.

For an example of the use of this instruction, see Sample Sets § 27.04A and § 27.04B.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION WILL NOT BE USED.

**26.05 Verdict—Guilty**

We, the jury, find the defendant \_\_\_\_\_ guilty of \_\_\_\_\_.

Foreperson

**Committee Note**

In all cases, the title of each offense under consideration by the jury for a possible guilty verdict should be identical to the title of that offense as set forth in each issues instruction.

The opening sentence of the issues instruction(s) as well as the guilty and not guilty verdict forms may be expanded in appropriate cases to distinguish among the different ways a particular charge is before the jury. See Committee Note to Instruction 26.01.

For an example of the use of this instruction, see Sample Sets § 27.01 through § 27.07.

IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, THIS INSTRUCTION WILL NOT BE USED.

**26.06 Death Penalty Verdicts****Committee Note**

Death penalty verdict forms are contained in Instructions 7B.10 through 7B.12, and 7C.08 through 7C.09A.



**26.07 Deadlocked Jury Supplemental Instruction**

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans. You are judges—judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

**Committee Note**

This instruction is taken from *People v. Prim*, 53 Ill.2d 62, 289 N.E.2d 601 (1972). The Committee takes no position on whether this instruction should be given or under what circumstances it should be given. For a recent case applying *Prim*, see *People v. Cowan*, 105 Ill.2d 324, 85 Ill.Dec. 502, 473 N.E.2d 1307 (1985).

**26.08 Suggested Rule 436 Instruction When Admonishing Jurors During Trial**

As jurors in this case your job is extremely important. Your decision on your verdict is to be based only upon the evidence that you see and hear in this courtroom and the instructions of law I will give you. Therefore, to remain fair and impartial you must refrain from doing the following things until you are discharged from service on this case:

1. You must not converse with anyone on any subject connected with this case;
2. You must not read or listen to any outside comments or news accounts of this case;
3. You must not discuss among yourselves any subject connected with the trial or form any opinion on the cause until it is submitted to you for your deliberation on a verdict;
4. You must not view or go to the place where the offense was allegedly committed [other than with the court as a part of this proceeding].

If you hear or observe anything about this case outside this courtroom, whether inadvertently or otherwise, you must immediately inform me at the beginning of our next session. Do not discuss any of those things with your fellow jurors at any time.

**Committee Note**

See Supreme Court Rule 436(b).

Rule 436(b) provides that a trial judge should admonish jurors concerning several of their most important duties. The Committee is providing this suggested instruction as an aid to trial judges.

**26.09 Suggested Rule 436 Instruction When Sending The Jury Home For The Night During Deliberations**

Stop deliberating at this time. We will now recess for the evening. You [should return to your homes] [may go about your normal affairs] and you must not discuss this case with anyone, including family members, friends, or your fellow jurors. All deliberations are to be conducted only in the jury deliberation room when all jurors are present.

As I told you at the beginning of this case, your job as jurors is extremely important. Your decision on your verdict is to be based only upon the evidence that you see and hear in this courtroom and the instruction of law that I have given you. Therefore, to remain fair and impartial you must refrain from doing the following things until you are discharged from service on this case:

1. You must not converse with anyone on any subject connected with this case;
2. You must not read or listen to any outside comments or news accounts of this case;
3. You must not discuss among yourselves any subject connected with the trial or form any opinion on the cause until you continue your deliberation on the verdict when all of you are present;
4. You must not view or go to the place where the offense was allegedly committed.

If you hear or observe anything about this case outside this courtroom, whether inadvertently or otherwise, you must immediately inform me at the beginning of our next session. Do not discuss any of these things with your fellow jurors at any time.

You are to report tomorrow morning to continue your jury service in this case.

**Committee Note**

See Supreme Court Rule 436(b).

Rule 436(b) provides that a trial judge should admonish jurors concerning several of their most important duties. The Committee is providing this suggested instruction as an aid to trial judges.

## Chapter 27.00

# SAMPLE SETS OF INSTRUCTIONS

### SYNOPSIS

#### INTRODUCTION

- 27.01 First Degree Murder—Self-Defense—Second Degree Murder—Statement Of The Defendant—(Defendant Is Arthur Fletcher)
- 27.02 Attempt First Degree Murder—Armed Robbery—Robbery Given As Lesser Included Offense—Accomplice Testimony—Prior Inconsistent Statements—Defendant With Prior Record—Venue At Issue—(Defendant Is Samuel Jones)
- 27.03 Criminal Sexual Assault—Aggravated Criminal Sexual Abuse—Two Defendants—Consent—(Defendants Are Sidney Sommers And Walter Winters)
- 27.04A First Degree Murder—Insanity Defense—Guilty But Mentally Ill Verdict—(Defendant Is Thomas Swanson)
- 27.04B First Degree Murder—Insanity Defense—Provocation—Second Degree Murder—Guilty But Mentally Ill Verdict—(Defendant Is Thomas Swanson)
- 27.05 First Degree Murder With Some Counts Based On Felony Murder And Some Counts Based On “Knowing Or Intentional” Murder—Second Degree Murder—(Defendant Is Lester Williams)
- 27.06 First Degree Murder—Second Degree Murder—Involuntary Manslaughter—(Defendant Is Edward Grady)
- 27.07 Possession With The Intent To Deliver A Controlled Substance Given With Lesser Included Offenses—(Defendant Is Karen Scott)



## INTRODUCTION

This chapter consists of seven sets of sample instructions. The court and counsel may wish to vary the order of these instructions to accommodate the needs of a particular case.

The bracketed instruction numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

The committee has determined that in certain circumstances it would be valuable for a trial court to have the option to provide the jury verdict forms for each charge on a single page. The committee believes this will be particularly valuable where the jury is instructed as to lesser-included offenses. The alternative, single page, multiple verdict form is given at the end of each sample set of instructions, following the traditional verdict forms. Thus, the trial court has the option of using either the traditional forms or the new single page multiple verdict forms. However, the committee does recommend that whichever format is used, this same format be used for all verdict forms given to an individual jury.

IF THE TRIAL COURT DECIDES TO USE THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM, IT WILL BE NECESSARY TO SLIGHTLY REVISE THE INSTRUCTIONS FROM CHAPTER 26. The instructions should be revised to tell the jury that the verdict options appear on one page; that the jury must unanimously agree on one of those options; that the jury should indicate its choice by checking off the appropriate verdict; and that the form should then be signed by the jurors.

## SET 27.01

### *Instructions Included within Set 27.01*

1.01	Functions of Court and Jury
1.02	Jury Sole Judges of Believability
1.03	Arguments of Counsel
2.01A	Charge Against Defendant—1st and 2nd Degree Murder—Jury Not Instructed on Other Charges
2.02	Indictment/Information Not Evidence
2.03A	Presumption of Innocence—Burden of Proof—1st and 2nd Degree Murder
3.06–3.07	Statements by Defendant
7.01A	Definition of 1st Degree Murder
7.05A	Definition of Mitigating Factor—2nd Degree Murder—Belief in Justification
24–25.06	Use of Force in Defense of a Person
24–25.09	Initial Aggressor's Use of Force
7.06A	Issues Instruction—1st and 2nd Degree Murder—Belief in Justification—Justifiable Use of Force
26.01A	Concluding Instruction—1st and 2nd Degree Murder—Jury Not Instructed on Other Charges
26.02	Verdict Form—Not Guilty
26.05	Verdict Form—Guilty of 1st Degree Murder
26.05	Verdict Form—Guilty of 2nd Degree Murder

In the first case (Set 27.01), the defendant, Arthur Fletcher, is charged with the first degree murder of Ralph Hudson. A police officer testifies that Fletcher admitted killing Hudson, but said nothing about self-defense. The defendant denies making any statement to the police. Fletcher testifies that he shot Hudson, but asserts that he was acting in self-defense. Witnesses for the State testify that Fletcher was the initial aggressor. The court instructs the jury on second degree murder.

### **27.01 First Degree Murder—Self-Defense—Second Degree Murder—Statement Of The Defendant—(Defendant Is Arthur Fletcher)**

#### **[1.01]**

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of

evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

#### [1.02]

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

#### [1.03]

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

#### [2.01A]

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

#### [2.02]

The charge against the defendant in this case is contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

#### [2.03A]

The defendant is presumed to be innocent of the charge against him of first degree



murder. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder. In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question.

**[3.06–3.07]**

You have before you evidence that the defendant made a statement relating to the offense charged in the information. It is for you to determine whether the defendant made the statement, and, if so, what weight should be given to the statement. In determining the weight to be given a statement, you should consider all of the circumstances under which it was made.

**[7.01]**

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which cause the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

**[7.05]**

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

**[24-25.06]**

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force.

However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary



to prevent imminent death or great bodily harm to himself.

[24-25.09]

A person who initially provokes the use of force against himself is justified in the use of force only if the force used against him is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape the danger other than the use of force which is likely to cause death or great bodily harm to the other person.

[7.06]

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

*First Proposition:* That the defendant performed the acts which caused the death of Ralph Hudson; and

*Second Proposition:* That when the defendant did so,

he intended to kill or do great bodily harm to Ralph Hudson;

or

he knew that such acts would cause death to Ralph Hudson;

or

he knew that such acts created a strong probability of death or great bodily harm to Ralph Hudson;

and

*Third Proposition:* That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations should end, and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of Ralph Hudson, believed the circumstances to be such

that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

### [26.01A]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

Accordingly, you will be provided with three verdict forms: "not guilty," "guilty of first degree murder," and "guilty of second degree murder."

From these three verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other two verdict forms. Sign only one verdict form.

### [26.02]

We, the jury, find the defendant Arthur Fletcher not guilty.

---

Foreperson

---

[Lines for eleven other jurors]

### [26.05]

We, the jury, find the defendant Arthur Fletcher guilty of first degree murder.

---

Foreperson

---

[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO

## THIS CHAPTER FOR DETAILS.

(Set 27.01)

## Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. \_\_\_\_\_ Arthur Fletcher not guilty. [26.02]
2. \_\_\_\_\_ Arthur Fletcher guilty of first degree murder. [26.05]
3. \_\_\_\_\_ Arthur Fletcher guilty of second degree murder. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

---

Foreperson

---

[Lines for eleven other jurors]



## SET 27.02

### *Instructions Included within Set 27.02*

1.01	Functions of Court and Jury
1.02	Jury Sole Judges of Believability
1.03	Arguments of Counsel
2.01A	Charge Against Defendant—1st and 2nd Degree Murder—Jury Not Instructed on Other Charges
2.02	Indictment/Information Not Evidence
2.03A	Presumption of Innocence—Burden of Proof—1st and 2nd Degree Murder
3.06–3.07	Statements by Defendant
7.01A	Definition of 1st Degree Murder
7.05A	Definition of Mitigating Factor—2nd Degree Murder—Belief in Justification
24-25.06	Use of Force in Defense of a Person
24-25.09	Initial Aggressor's Use of Force
7.06A	Issues Instruction—1st and 2nd Degree Murder—Belief in Justification—Justifiable Use of Force
26.01A	Concluding Instruction—1st and 2nd Degree Murder—Jury Not Instructed on Other Charges
26.02	Verdict Form—Not Guilty
26.05	Verdict Form—Guilty of 1st Degree Murder
26.05	Verdict Form—Guilty of 2nd Degree Murder

In the second case (Set 27.02), the defendant, Samuel Jones, is charged in Cook County with attempt first degree murder and armed robbery of William Smith. Smith testifies that Jones and some others viciously beat Smith, hit him with a stick, and robbed him. At the time of the crime, Smith gives a vague description of the offender, but immediately identifies Jones in a line-up conducted four weeks later. Jones testifies that he was somewhere else at the time of the robbery. An alleged accomplice, who is impeached by a prior inconsistent statement, testifies as a prosecution witness that he helped Jones commit the offense. The State has told the accomplice it will recommend he receive probation in return for his testimony.

The defendant has been impeached with his prior conviction of burglary. The defendant's car was observed speeding away from the scene of the robbery. Arnold Davis testifies for the defense that the defendant loaned Davis the defendant's car on the night of the beating. However, Davis identifies a written statement he gave to the police in which he made no mention of borrowing the defendant's car on the night in question and in which he said he saw the defendant driving the defendant's car shortly after the time of the robbery.

The alleged victim had numerous interviews with the prosecutor, but declined to speak to defense counsel. The defendant's alibi witnesses declined to speak to the prosecutor. Because defense counsel argues that the stick was not a dangerous weapon,



the court instructs the jury on the lesser included offense of robbery. Because the beating occurred in a wooded area near the county line, an issue arises concerning venue.

**27.02 Attempt First Degree Murder—Armed Robbery—Robbery Given As Lesser Included Offense—Accomplice Testimony—Prior Inconsistent Statements—Defendant With Prior Record—Venue At Issue—(Defendant Is Samuel Jones)**

**[1.01]**

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

**[1.02]**

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

**[1.03]**

Opening statements are made by the attorneys to acquaint you with the facts they

expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

**[2.01R]**

The defendant is charged with the offense of armed robbery. The defendant has pleaded not guilty. Under the law, a person charged with armed robbery may be found (1) not guilty of armed robbery and not guilty of robbery; or (2) guilty of armed robbery; or (3) guilty of robbery.

The defendant is also charged with the offense of attempt first degree murder. The defendant has pleaded not guilty.

**[2.02]**

The charges against the defendant in this case are contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

**[2.03]**

The defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

**[3.02]**

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

**[3.10]**

It is proper for an attorney to interview or attempt to interview a witness for the purpose of learning the testimony the witness will give.

However, the law does not require a witness to speak to an attorney before testifying.

**[3.11]**

The believability of a witness may be challenged by evidence that on some former occasion he made a statement that was not consistent with his testimony in this case. Evidence of this kind ordinarily may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom.

However, you may consider a witness's earlier inconsistent statement as evidence without this limitation when the statement narrates, describes, or explains an event or condition the witness had personal knowledge of; and

the statement was written or signed by the witness, or

the witness acknowledged under oath that he made the statement.

It is for you to determine what weight should be given to that statement. In determining the weight to be given to an earlier statement, you should consider all of the circumstances under which it was made.

**[3.13]**

Evidence of a defendant's previous conviction of an offense may be considered by you only as it may affect his believability as a witness and must not be considered by you as evidence of his guilt of the offense with which he is charged.

**[3.15]**

When you weigh the identification testimony of a witness, you should consider all the facts and circumstances in evidence, including, but not limited to, the following:

The opportunity the witness had to view the offender at the time of the offense.

The witness's degree of attention at the time of the offense.

The witness's earlier description of the offender.

The level of certainty shown by the witness when confronting the defendant.

The length of time between the offense and the identification confrontation.

**[3.17]**

When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case.

**[4.17]**

An object or an instrument which is not inherently dangerous may be a dangerous weapon depending on the manner of its use and the circumstances of the case.

**[6.05X]**

A person commits the offense of attempt first degree murder when he, with the intent to kill an individual, does any act which constitutes a substantial step toward the killing of an individual.

The killing attempted need not have been accomplished.

**[5.03]**

A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts



to aid the other person in the planning or commission of an offense.

The word “conduct” includes any criminal act done in furtherance of the planned and intended act.

**[6.07X/2.08]**

To sustain the charge of attempt first degree murder, the State must prove the following propositions:

*First Proposition:* That the defendant or one for whose conduct he is legally responsible performed an act which constituted a substantial step toward the killing of an individual; and

*Second Proposition:* That the defendant or one for whose conduct he is legally responsible did so with the intent to kill an individual.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**[14.05]**

A person commits the offense of armed robbery when he, while carrying on or about his person, or while otherwise armed with a dangerous weapon, intentionally takes property from the person or presence of another by the use of force or by threatening the imminent use of force.

**[14.06]**

To sustain the charge of armed robbery, the State must prove the following propositions:

*First Proposition:* That the defendant or one for whose conduct he is legally responsible intentionally took property from the person or presence of William Smith; and

*Second Proposition:* That the defendant or one for whose conduct he is legally responsible did so by the use of force or by threatening the imminent use of force; and

*Third Proposition:* That the defendant or one for whose conduct he is legally responsible carried on or about his person a dangerous weapon or was otherwise armed with a dangerous weapon at the time of the taking.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.



**[14.01]**

A person commits the offense of robbery when he intentionally takes property from the person or the presence of another by the use of force or by threatening the imminent use of force.

**[14.02]**

To sustain the charge of robbery, the State must prove the following propositions:

*First Proposition:* That the defendant or one for whose conduct he is legally responsible intentionally took property from the person or presence of William Smith; and

*Second Proposition:* That the defendant or one for whose conduct he is legally responsible did so by the use of force or by threatening the imminent use of force.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**[26.01R]**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of armed robbery. Under the law, a person charged with armed robbery may be found (1) not guilty of armed robbery and not guilty of robbery; or (2) guilty of armed robbery; or (3) guilty of robbery.

Accordingly, you will be provided with three verdict forms pertaining to the charge of armed robbery: “not guilty of armed robbery and not guilty of robbery,” “guilty of armed robbery,” and “guilty of robbery.”

From these three verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other two verdict forms. Sign only one of these verdict forms.

The defendant is also charged with the offense of attempt first degree murder. You will receive two forms of verdict as to this charge. You will be provided with both a “not guilty of attempt first degree murder” and a “guilty of attempt first degree murder” form of verdict.

From these two verdict forms, you should select the one verdict form that reflects your verdict pertaining to the charge of attempt first degree murder and sign it as I have stated. You should not write at all on the other verdict form pertaining the charge of attempt first degree murder.

If you find the State has proved the defendant guilty of both armed robbery and robbery, you should select the verdict form finding the defendant guilty of armed robbery and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of robbery.

[26.02]

We, the jury, find the defendant Samuel Jones not guilty of armed robbery and not guilty of robbery.

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Samuel Jones guilty of armed robbery.

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Samuel Jones guilty of robbery.

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Samuel Jones not guilty of attempt first degree murder.

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Samuel Jones guilty of attempt first degree murder.

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING

INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.02)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. \_\_\_\_\_ Samuel Jones not guilty of armed robbery and not guilty of robbery. [26.02]
2. \_\_\_\_\_ Samuel Jones guilty of armed robbery. [26.05]
3. \_\_\_\_\_ Samuel Jones guilty of robbery. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

---

Foreperson

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[Lines for eleven other jurors]

(Set 27.02)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. \_\_\_\_\_ Samuel Jones not guilty of attempt first degree murder. [26.02]
2. \_\_\_\_\_ Samuel Jones guilty of attempt first degree murder. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

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Foreperson

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[Lines for eleven other jurors]

## SET 27.03

### *Instructions Included within Set 27.03*

- 1.01 Functions of Court and Jury
- 1.02 Jury Sole Judges of Believability
- 1.03 Arguments of Counsel
- 2.01 Charge Against Defendant—Multiple Defendants
- 2.02 Indictment/Information Not Evidence
- 2.03 Presumption of Innocence—Burden of Proof
- 3.05 Separate Consideration for Each Defendant
- 5.03 Accountability
- 11.55 Definition of Criminal Sexual Assault
- 11.65E Definition of Sexual Penetration
- 11.56 Issues Instruction—Criminal Sexual Assault As to Defendant Sidney Sommers
- 11.56 Issues Instruction—Criminal Sexual Assault As to Defendant Walter Winters
- 11.63 Defense of Consent
- 11.63A Definition of Consent
- 11.61 Definition of Aggravated Criminal Sexual Abuse
- 11.62A Issues Instruction—Aggravated Criminal Sexual Abuse As to Defendant Sidney Sommers
- 11.62A Issues Instruction—Aggravated Criminal Sexual Abuse As to Defendant Walter Winters
- 11.64 Defense to Aggravated Criminal Sexual Abuse
- 4.13 Definition of Reasonable Belief
- 26.01 Concluding Instruction—Multiple Defendants
- 26.02 Verdict Forms—Not Guilty of Criminal Sexual Assault (Sidney Sommers)
- 26.05 Verdict Form—Guilty of Criminal Sexual Assault (Sidney Sommers)
- 26.02 Verdict Form—Not Guilty of Aggravated Criminal Sexual Abuse (Sidney Sommers)
- 26.05 Verdict Form—Guilty of Aggravated Criminal Sexual Abuse (Sidney Sommers)
- 26.02 Verdict Form—Not Guilty of Criminal Sexual Assault (Walter Winters)
- 26.05 Verdict Form—Guilty of Criminal Sexual Assault—(Walter Winters)
- 26.02 Verdict Form—Not Guilty of Aggravated Criminal Sexual Abuse (Walter Winters)
- 26.05 Verdict Form—Guilty of Aggravated Criminal Sexual Abuse (Walter Winters)

In the third case (Set 27.03), the two defendants, Sidney Sommers and Walter Winters, both 26 years old, are charged in the same information with criminal sexual



assault of Ann Strong, a 15-year-old female. A second count charges them with aggravated criminal sexual abuse of the same alleged victim. She testifies that she accepted the defendants' offer of a ride home from a party. She says they pulled into an alley and Winters slapped her once and held her while Sommers forcibly engaged in sexual intercourse with her. The defendants say the girl agreed to the sexual acts that took place. They also testify she said she was 17 years old and that she appeared to be at least that old.

**27.03 Criminal Sexual Assault—Aggravated Criminal Sexual Abuse—Two Defendants—Consent—(Defendants Are Sidney Sommers And Walter Winters)**

**[1.01]**

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

**[1.02]**

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe, his or her memory, his or her manner while testifying, any interest, bias, or prejudice he or she may have, and the reasonableness of his or her testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendants in the same manner as you judge the testimony of any other witness.

**[1.03]**

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

**[2.01]**

The defendants are charged with the offenses of criminal sexual assault and aggravated criminal sexual abuse. The defendants have pleaded not guilty.

**[2.02]**

The charges against the defendants in this case are contained in a document called the information. This document is the formal method of charging the defendants and placing the defendants on trial. It is not any evidence against the defendants.

**[2.03]**

Each defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

**[3.05]**

You should give separate consideration to each defendant. Each is entitled to have his case decided on the evidence and the law which applies to him.

Any evidence which was limited to one defendant should not be considered by you as to the other defendant.

**[5.03]**

A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of the offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of the offense.

**[11.55]**

A person commits the offense of criminal sexual assault when he commits an act of sexual penetration upon the victim by the use of force or threat of force.

**[11.65E]**

The term "sexual penetration" means any intrusion, however slight, of any part of the

body of one person into the sex organ of another person. Evidence of emission of semen is not required to prove sexual penetration.

**[11.56]**

To sustain the charge of criminal sexual assault against the defendant Sidney Sommers, the State must prove the following propositions:

*First Proposition:* That the defendant, or one for whose conduct he is legally responsible, committed an act of sexual penetration upon Ann Strong; and

*Second Proposition:* That the act was committed by the use of force or threat of force; and

*Third Proposition:* That Ann Strong did not consent to the act of sexual penetration.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**[11.56]**

To sustain the charge of criminal sexual assault against the defendant Walter Winters, the State must prove the following propositions:

*First Proposition:* That the defendant, or one for whose conduct he is legally responsible, committed an act of sexual penetration upon Ann Strong; and

*Second Proposition:* That the act was committed by the use of force or threat of force; and

*Third Proposition:* That Ann Strong did not consent to the act of sexual penetration.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**[11.63]**

It is a defense to the charge of criminal sexual assault that Ann Strong consented.

**[11.63A]**

The word “consent” means a freely given agreement to the act of sexual penetration in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the defendant shall not constitute consent.

**[11.61]**

A person commits the offense of aggravated criminal sexual abuse when he commits



an act of sexual penetration with a victim who is at least 13 years of age but under 17 years of age when the act is committed and he is at least 5 years older than the victim.

**[11.62A]**

To sustain the charge of aggravated criminal sexual abuse against the defendant Sidney Sommers, the State must prove the following propositions:

*First Proposition:* That the defendant, or one for whose conduct he is legally responsible, committed an act of sexual penetration upon Ann Strong; and

*Second Proposition:* That Ann Strong was at least 13 years of age but under 17 years of age when the act was committed; and

*Third Proposition:* That the defendant was at least 5 years older than Ann Strong; and

*Fourth Proposition:* That the defendant did not reasonably believe Ann Strong to be 17 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**[11.62A]**

To sustain the charge of aggravated criminal sexual abuse against the defendant Walter Winters, the State must prove the following propositions:

*First Proposition:* That the defendant, or one for whose conduct he is legally responsible, committed an act of sexual penetration upon Ann Strong; and

*Second Proposition:* That Ann Strong was at least 13 years of age but under 17 years of age when the act was committed; and

*Third Proposition:* That the defendant was at least 5 years older than Ann Strong; and

*Fourth Proposition:* That the defendant did not reasonably believe Ann Strong to be 17 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**[11.64]**

It is a defense to the charge of aggravated criminal sexual abuse that the defendant reasonably believed Ann Strong to be 17 years of age or older.

**[4.13]**

The phrases “reasonable belief” or “reasonably believes” mean that the person



concerned, acting as a reasonable person, believes that the described facts exist.

**[26.01]**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberation on your verdicts.

Your agreement on a verdict must be unanimous. Your verdicts must be in writing and signed by all of you, including your foreperson.

The defendants are charged with the offenses of criminal sexual assault and aggravated criminal sexual abuse. You will receive eight forms of verdict. As to each charge and for each defendant, you will be provided with both a “not guilty” and “guilty” form of verdict. From these two verdict forms with regard to a particular charge, you should select the one verdict form that reflects your verdict on that charge as to each defendant and sign it as I have stated. Do not write on the other verdict form on that charge as to that defendant. Sign only one verdict form on that charge as to that defendant.

**[26.02]**

We, the jury, find the defendant Sidney Sommers not guilty of criminal sexual assault.

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Foreperson

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[Lines for eleven other jurors]

**[26.05]**

We, the jury, find the defendant Sidney Sommers guilty of criminal sexual assault.

---

Foreperson

---

[Lines for eleven other jurors]

**[26.02]**

We, the jury, find the defendant Sidney Sommers not guilty of aggravated criminal sexual abuse.

---

Foreperson

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[Lines for eleven other jurors]

**[26.05]**

We, the jury, find the defendant Sidney Sommers guilty of aggravated criminal sexual abuse.

---

Foreperson

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[Lines for eleven other jurors]

**[26.02]**

We, the jury, find the defendant Walter Winters not guilty of criminal sexual assault.

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 Foreperson
 

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 [Lines for eleven other jurors]
 

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**[26.05]**

We, the jury, find the defendant Walter Winters guilty of criminal sexual assault.

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 Foreperson
 

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 [Lines for eleven other jurors]
 

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**[26.02]**

We, the jury, find the defendant Walter Winters not guilty of aggravated criminal sexual abuse.

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 Foreperson
 

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 [Lines for eleven other jurors]
 

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**[26.05]**

We, the jury, find the defendant Walter Winters guilty of aggravated criminal sexual abuse.

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 Foreperson
 

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 [Lines for eleven other jurors]
 

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NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.03)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. \_\_\_\_\_ Sidney Sommers not guilty of criminal sexual assault.

[26.02]

2. \_\_\_\_\_ Sidney Sommers guilty of criminal sexual assault. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

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Foreperson

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[Lines for eleven other jurors]

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(Set 27.03)

## Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. \_\_\_\_\_ Sidney Sommers not guilty of aggravated criminal sexual abuse. [26.02]
2. \_\_\_\_\_ Sidney Sommers guilty of aggravated criminal sexual abuse. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

---

Foreperson

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---

[Lines for eleven other jurors]

---

(Set 27.03)

## Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. \_\_\_\_\_ Walter Winters not guilty of criminal sexual assault. [26.02]
2. \_\_\_\_\_ Walter Winters guilty of criminal sexual assault. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

---

Foreperson

---

---

[Lines for eleven other jurors]

---

(Set 27.03)

## Alternative, Single Page, Multiple Verdict Form

1. \_\_\_\_\_ Walter Winters not guilty of aggravated criminal sexual abuse. [26.02]
2. \_\_\_\_\_ Walter Winters guilty of aggravated criminal sexual abuse. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

---

Foreperson

---

---

[Lines for eleven other jurors]

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## SET 27.04A

The fourth case (Set 27.04) is designed to demonstrate the utilization of jury instructions when the jury is instructed on the guilty but mentally ill verdict. Set 27.04 has been divided into Sets 27.04A and 27.04B to demonstrate jury instructions to be used when the jury will be considering only first degree murder and the guilty but mentally ill verdict (Set 27.04A), as opposed to when the jury will be considering both first degree murder and second degree murder, as well as the guilty but mentally ill verdict (Set 27.04B).

### *Instructions Included within Set 27.04A*

1.01	Functions of Court and Jury
1.02	Jury Sole Judges of Believability
1.03	Arguments of Counsel
2.01AA	Charge Against Defendant—Insanity Defense—Guilty But Mentally Ill Verdict
2.02	Indictment/Information Not Evidence
2.03	Presumption of Innocence—Burden of Proof
2.03B	Presumption of Innocence—Burden of Proof—Insanity Defense
2.04	Failure of Defendant to Testify
7.01A	Definition of 1st Degree Murder
24-25.01	Definition of Insanity
4.18	Definition of Preponderance of Evidence
24-25.01B	Explanation of Guilty But Mentally Ill
24-25.01C	Definition of Mentally Ill
7.02A/24-25.01D	Issues Instruction—1st Degree Murder—Insanity Defense—Guilty But Mentally Ill Verdict
26.01AA	Concluding Instruction—Insanity Defense—Guilty But Mentally Ill Verdict
26.02	Verdict Form—Not Guilty
26.03	Verdict Form—Not Guilty by Reason of Insanity of 1st Degree Murder
26.05	Verdict Form—Guilty of 1st Degree Murder
26.04	Verdict Form—Guilty But Mentally Ill of 1st Degree Murder

In Set 27.04A, the defendant, Thomas Swanson, a black male, is charged with the first degree murder of Henry Carter. The State's evidence shows that the two men had a verbal confrontation before the defendant stabbed Carter 17 times with an ice pick. The defendant puts forth an insanity defense, but does not testify. No defense witness testifies to the events surrounding Carter's death. The court instructs the jury on the guilty but mentally ill verdict.



**27.04A First Degree Murder—Insanity Defense—Guilty But Mentally Ill  
Verdict—(Defendant Is Thomas Swanson)**

**[1.01]**

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you. You should not be influenced by any person's race, color, religion, or national ancestry.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

**[1.02]**

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

**[1.03]**

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing

arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

**[2.01AA]**

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder.

**[2.02]**

The charge against the defendant in this case is contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

**[2.03]**

The defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

**[2.03B]**

The defense of insanity has been presented during the trial. The burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden remains on the State to prove beyond a reasonable doubt each of the elements of the offense charged. You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first been determined that the State has proved the defendant guilty beyond a reasonable doubt of the offense with which he is charged.

**[2.04]**

The fact that a defendant did not testify must not be considered by you in any way in arriving at your verdict.

**[7.01]**

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which cause the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

**[24-25.01]**

A person is insane and not criminally responsible for his conduct if at the time of the conduct, as a result of mental disease or mental defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.

**[4.18]**

The phrase “preponderance of the evidence” means whether, considering all the evidence in the case, the proposition on which the defendant has the burden of proof is more probably true than not true.

**[24-25.01B]**

A person may be found guilty but mentally ill and is not relieved of criminal responsibility for his conduct if at the time of the commission of the offense he was not insane but was suffering from a mental illness.

**[24-25.01 C]**

A person is mentally ill if, at the time of the commission of the offense, he was afflicted by a substantial disorder of thought, mood, or behavior which impaired his judgment, but not to the extent that he was unable to appreciate the wrongfulness of his behavior.

**[7.02/24-25.01D]**

To sustain the charge of first degree murder, the State must prove the following propositions:

*First Proposition:* That the defendant performed the acts which caused the death of Henry Carter; and

*Second Proposition:* That when the defendant did so,

he intended to kill or do great bodily harm to Henry Carter;

or

he knew that such acts would cause death to Henry Carter;

or

he knew that such acts created a strong probability of death or great bodily harm to Henry Carter.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty, your deliberations should end, and you should return the verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity.



You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless you have first determined that the State has proved the defendant guilty beyond a reasonable doubt.

If you find from your consideration of all the evidence that the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity, your deliberations should end, and you should return the verdict of not guilty by reason of insanity.

If you find from your consideration of all the evidence that the defendant has not proved by clear and convincing evidence that he is not guilty by reason of insanity, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

*First:* That the State has proved beyond a reasonable doubt that the defendant is guilty of first degree murder; and

*Second:* That the defendant has not proved by clear and convincing evidence that he was insane at the time he committed the offense of first degree murder; and

*Third:* That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed the offense of first degree murder.

If you find from your consideration of all the evidence that each one of these circumstances is present, you may return the special verdict finding the defendant guilty but mentally ill.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the defendant is guilty of first degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty.

#### [26.01AA]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder.

Accordingly, you will be provided with four verdict forms: "not guilty," "not guilty by reason of insanity of first degree murder," "guilty of first degree murder," and "guilty but mentally ill of first degree murder."

From these four verdict forms, you should select the one verdict form that reflects



your verdict and sign it as I have stated. Do not write on the other three verdict forms. Sign only one verdict form.

**[26.02]**

We, the jury, find the defendant Thomas Swanson not guilty.

---

Foreperson

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[Lines for eleven other jurors]

**[26.03]**

We, the jury, find the defendant Thomas Swanson not guilty by reason of insanity of first degree murder.

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Foreperson

---

[Lines for eleven other jurors]

**[26.05]**

We, the jury, find the defendant Thomas Swanson guilty of first degree murder.

---

Foreperson

---

[Lines for eleven other jurors]

**[26.04]**

We, the jury, find the defendant Thomas Swanson guilty but mentally ill of first degree murder.

---

Foreperson

---

[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.04A)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. \_\_\_\_\_ Thomas Swanson not guilty. [26.02]
2. \_\_\_\_\_ Thomas Swanson not guilty by reason of insanity of first degree murder. [26.03]

- 3. \_\_\_\_\_ Thomas Swanson guilty of first degree murder. [26.05]
- 4. \_\_\_\_\_ Thomas Swanson guilty but mentally ill of first degree murder. [26.04]

Indicate your unanimous verdict by checking only one of the choices above.

\_\_\_\_\_

Foreperson

\_\_\_\_\_

[Lines for eleven other jurors]



## SET 27.04B

### *Instructions Included within Set 27.04B*

1.01	Functions of Court and Jury
1.02	Jury Sole Judges of Believability
1.03	Arguments of Counsel
2.01G	Charge Against Defendant—1st and 2nd Degree Murder— Insanity Defense—Guilty But Mentally Ill Verdict
2.02	Indictment/Information Not Evidence
2.03	Presumption of Innocence—Burden of Proof
2.03A	Presumption of Innocence—Burden of Proof—1st and 2nd De- gree Murder
2.03B	Presumption of Innocence—Burden of Proof—Insanity Defense
2.04	Failure of Defendant to Testify
7.01A	Definition of 1st Degree Murder
7.03A	Definition of Mitigating Factor—1st and 2nd Degree Murder— Provocation
24-25.01	Definition of Insanity
4.18	Definition of Preponderance of the Evidence
24-25.01B	Explanation of Guilty But Mentally Ill
24-25.01C	Definition of Mentally Ill
7.04A/24-25.01F	Issues Instruction—1st and 2nd Degree Murder—Insanity Defense—Guilty But Mentally Ill Verdict
26.01G	Concluding Instruction—1st and 2nd Degree Murder—Insanity Defense—Guilty But Mentally Ill Verdict
26.02	Verdict Form—Not Guilty
26.03	Verdict Form—Not Guilty by Reason of Insanity of 1st Degree Murder
26.03	Verdict Form—Not Guilty by Reason of Insanity of 2nd Degree Murder
26.05	Verdict Form—Guilty of 1st Degree Murder
26.05	Verdict Form—Guilty of 2nd Degree Murder
26.04	Verdict Form—Guilty But Mentally Ill of 1st Degree Murder
26.04	Verdict Form—Guilty But Mentally Ill of 2nd Degree Murder

In Set 27.04B, the defendant, Thomas Swanson, is charged with the first degree murder of Henry Carter. The State's evidence shows that the two men had a verbal and physical confrontation before the defendant stabbed Henry Carter 17 times with an ice pick. The defendant puts forth an insanity defense, but does not testify. No defense witness testifies to the events surrounding Carter's death. The court instructs the jury on second degree murder. The court also instructs the jury on the guilty but mentally ill verdict.



**27.04B First Degree Murder—Insanity Defense—Provocation—Second Degree Murder—Guilty But Mentally Ill Verdict—(Defendant Is Thomas Swanson)**

**[1.01]**

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

**[1.02]**

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

**[1.03]**

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing

arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

**[2.01G]**

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

**[2.02]**

The charge against the defendant in this case is contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

**[2.03A]**

The defendant is presumed to be innocent of the charge against him of first degree murder. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder. In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question. The defendant is not required to present any evidence in order to establish the existence of a mitigating factor.

**[2.03B]**

The defense of insanity has been presented during the trial. The burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden remains on the State to prove beyond a reasonable doubt each of the elements of the offense charged. You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first been determined that the State has proved the defendant guilty beyond a reasonable doubt of the offense with which he is charged.

**[2.04]**

The fact that the defendant did not testify must not be considered by you in any way in arriving at your verdict.

**[7.01]**

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which cause the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

**[7.03]**

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if, at the time of the killing, the defendant acts under a sudden and intense passion resulting from serious provocation by the deceased. Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

**[24-25.01]**

A person is insane and not criminally responsible for his conduct if at the time of the conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct.

**[4.18]**

The phrase “preponderance of the evidence” means whether, considering all the evidence in the case, the proposition on which the defendant has the burden of proof is more probably true than not true.

**[24-25.01B]**

A person may be found guilty but mentally ill and is not relieved of criminal responsibility for his conduct if at the time of the commission of the offense he was not insane but was suffering from a mental illness.

**[24-25.01C]**

A person is mentally ill if, at the time of the commission of the offense, he was afflicted by a substantial disorder of thought, mood, or behavior which impaired his judgment, but not to the extent that he was unable to appreciate the wrongfulness of his behavior.

**[7.04/24-25.01F]**

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

*First Proposition:* That the defendant performed the acts which caused the death of Henry Carter; and



*Second Proposition:* That when the defendant did so,  
he intended to kill or do great bodily harm to Henry Carter;  
or he knew that such acts would cause death to Henry Carter;  
or he knew that such acts created a strong probability of death or great bodily harm  
to Henry Carter.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty, your deliberations should end, and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of Henry Carter, acted under a sudden and intense passion resulting from serious provocation by the deceased.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by a preponderance of the evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge,



either first degree murder or second degree murder, that you found earlier to apply, your deliberations should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by clear and convincing evidence that he is not guilty by reason of insanity of first degree murder or second degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill on that murder charge.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

*First:* That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

*Second:* That the defendant has not proved by clear and convincing evidence that he was insane at the time he committed whichever murder you found earlier to be applicable; and

*Third:* That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to be applicable.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

#### [26.01G]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

Accordingly, you will be provided with seven verdict forms: “not guilty,” “not guilty

by reason of insanity of first degree murder,” “guilty of first degree murder,” “guilty but mentally ill of first degree murder,” “not guilty by reason of insanity of second degree murder,” “guilty of second degree murder,” and “guilty but mentally ill of second degree murder.”

From these seven verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other six verdict forms. Sign only one verdict form.

[26.02]

We, the jury, find the defendant Thomas Swanson not guilty.

Foreperson

[Lines for eleven other jurors]

[26.03]

We, the jury, find the defendant Thomas Swanson not guilty by reason of insanity of first degree murder.

Foreperson

[Lines for eleven other jurors]

[26.03]

We, the jury, find the defendant Thomas Swanson not guilty by reason of insanity of second degree murder.

Foreperson

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Thomas Swanson guilty of first degree murder.

Foreperson

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Thomas Swanson guilty of second degree murder.

Foreperson

[Lines for eleven other jurors]

[26.04]

We, the jury, find the defendant Thomas Swanson guilty but mentally ill of first degree murder.

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Foreperson

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[Lines for eleven other jurors]

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**[26.04]**

We, the jury, find the defendant Thomas Swanson guilty but mentally ill of second degree murder.

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Foreperson

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[Lines for eleven other jurors]

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NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.04B)

Alternative, Single Page, Multiple Verdict Form We, the jury, find the defendant:

1. \_\_\_\_\_ Thomas Swanson not guilty. [26.02]
2. \_\_\_\_\_ Thomas Swanson not guilty by reason of insanity of first degree murder. [26.03]
3. \_\_\_\_\_ Thomas Swanson not guilty by reason of insanity of second degree murder. [26.03]
4. \_\_\_\_\_ Thomas Swanson guilty of first degree murder. [26.05]
5. \_\_\_\_\_ Thomas Swanson guilty of second degree murder. [26.05]
6. \_\_\_\_\_ Thomas Swanson guilty but mentally ill of first degree murder. [26.04]
7. \_\_\_\_\_ Thomas Swanson guilty but mentally ill of second degree murder. [26.04]

Indicate your unanimous verdict by checking only one of the choices above.

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Foreperson

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[Lines for eleven other jurors]

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## SET 27.05

### *Instructions Included within Set 27.05*

1.01	Functions of Court and Jury
1.02	Jury Sole Judges of Believability
1.03	Arguments of Counsel
2.01B (modified)	Charge Against Defendant—1st Degree Murder (Type A) and (Type B)—2nd Degree Murder—Jury Instructed on Other Charge
7.01X	Explanation of (Type A) and (Type B) 1st Degree Murder
2.02	Indictment/Information Not Evidence
2.03 (modified)	Presumption of Innocence—Burden of Proof
2.03A (modified)	Presumption of Innocence—Burden of Proof—1st and 2nd Degree Murder
3.02	Definition of Circumstantial Evidence
3.14	Evidence of Other Offenses
11.53	Definition of Home Invasion
11.54	Issues Instruction—Home Invasion
7.01A (modified)	Definition of 1st Degree Murder (Type B)
7.02 (modified)	Issues Instruction—1st Degree Murder (Type B)
7.02X	Explanation of Relationship of Home Invasion to 1st Degree Murder (Type B)
7.01A (modified)	Definition of 1st Degree Murder (Type A)
7.03A (modified)	Definition of Mitigating Factor—2nd Degree Murder—Provocation
7.05A (modified)	Definition of Mitigating Factor—2nd Degree Murder—Belief in Justification
7.06A (modified)	Issues Instruction—1st Degree Murder (Type A) and 2nd Degree Murder—Provocation and Belief in Justification—Justifiable Use of Force
24-25.06	Use of Force in Defense of a Person
24-25.09	Initial Aggressor's Use of Force
24-25.10	Forcible Felon Not Entitled to Use Force
26.01B (modified)	Concluding Instruction—1st Degree Murder (Type A) and (Type B)—2nd Degree Murder—Jury Instructed on Other Charge
26.02	Verdict Form—Not Guilty of 1st Degree Murder (Type B)
26.05	Verdict Form—Guilty of 1st Degree Murder (Type B)
26.02	Verdict Form—Not Guilty of 1st Degree Murder (Type A)
26.05	Verdict Form—Guilty of 1st Degree Murder (Type A)
26.05	Verdict Form—Guilty of 2nd Degree Murder
26.02	Verdict Form—Not Guilty of Home Invasion
26.05	Verdict Form—Guilty of Home Invasion

In the fifth case (Set 27.05), the defendant, Lester Williams, is charged with home invasion and first degree murder. The State claims that he killed the victim, Henry



Baxter, while committing the forcible felony of home invasion. The defendant is also charged with first degree murder based upon the charge that he killed Baxter intending to kill or to do great bodily harm to Baxter, or knew that his acts would do so.

The evidence for the State shows that Williams, while armed with a hunting knife, entered the trailer of his estranged wife and therein confronted her and her new boyfriend, Baxter. The State's evidence is that an argument ensued, the defendant drew his knife and attacked Baxter, who subsequently died from the stab wounds.

The defendant testifies that his wife voluntarily permitted him to enter her trailer, Baxter started an argument with him, he left, and Baxter jumped him just outside the trailer's front door. Only then did the defendant pull his knife in self-defense and stab Baxter. Baxter then staggered into the trailer where he collapsed and died on the living room floor.

The court permits the State to present evidence that three weeks before this confrontation, Williams struck Baxter in the head with a bottle while they were in a tavern and said, "If you don't stay away from my wife, I'm going to kill you."

The court instructs the jury on two different versions of first degree murder. One set of first degree murder instructions (Type A) is based upon the charge that defendant killed the deceased while intending to kill or cause great bodily harm to the deceased or knowing that his acts would do so. This set of instructions also permits the jury to find defendant guilty of second degree murder. The other set of first degree murder instructions (Type B) is based upon felony murder, and this set does not permit the jury to find the defendant guilty of second degree murder.

**27.05 First Degree Murder With Some Counts Based On Felony Murder And Some Counts Based On "Knowing Or Intentional" Murder—Second Degree Murder—(Defendant Is Lester Williams)**

**[1.01]**

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others. When I use the word "he" in these instructions, I mean a male or female.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

**[1.02]**

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

**[1.03]**

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

**[2.01B (modified)]**

The defendant is charged with the offense of first degree murder (Type A). The defendant has pleaded not guilty. Under the law, a person charged with first degree murder (Type A) may be found (1) not guilty of first degree murder (Type A); or (2) guilty of first degree murder (Type A); or (3) guilty of second degree murder.

The defendant is also charged with the offenses of first degree murder (Type B) and home invasion. Defendant has pleaded not guilty to that charge.

**[7.01X]**

The terms “(Type A)” and “(Type B)” that I used in referring to first degree murder have no legal significance. I use those terms simply to distinguish between different kinds of first degree murder.

**[2.02]**

The charges against the defendants in this case are contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

**[2.03 (modified)]**

The defendant is presumed to be innocent of the charges against him of first degree



murder (Type B) and home invasion. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdicts, and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty. The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

**[2.03A (modified)]**

The defendant is presumed to be innocent of the charge against him of first degree murder (Type A). The presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all of the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving that the defendant is guilty of first degree murder (Type A), and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder (Type A), the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder (Type A). In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question.

**[3.02]**

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

**[3.14]**

Evidence has been received that the defendant has been involved in an offense other than those charged in the indictment. This evidence has been received on the issue of the defendant's intent and may be considered by you only for that limited purpose. It is for you to determine whether the defendant was involved in that offense and, if so, what weight should be given to this evidence on the issue of the defendant's intent.

**[11.53]**

A person commits the offense of home invasion when he, not being a police officer acting in the line of duty, without authority, knowingly enters the dwelling place of another when he knows or has reason to know that one or more persons is present, and intentionally causes any injury to any person within the dwelling place.

**[11.54]**

To sustain the charge of home invasion, the State must prove the following propositions:

*First Proposition:* That the defendant was not a police officer acting in the line of duty; and

*Second Proposition:* That he knowingly and without authority entered the dwelling place of another; and

*Third Proposition:* That when he entered the dwelling place he knew or had reason to know that one or more persons was present; and

*Fourth Proposition:* That he intentionally caused an injury to Henry Baxter, a person within the dwelling place.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**[7.01 (modified)]**

A person commits the offense of first degree murder (Type B) when he kills an individual if, in performing the acts which caused the death, he is committing the offense of home invasion.

**[7.02 (modified)]**

To sustain the charge of first degree murder (Type B), the State must prove the following propositions:

*First Proposition:* That the defendant performed the acts which caused the death of Henry Baxter; and

*Second Proposition:* That when the defendant did so, he was committing the offense of home invasion.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**[7.02X]**

To sustain the charge of first degree murder (Type B), the State must prove that when the defendant performed the acts which caused the death of Henry Baxter, the defendant was committing the offense of home invasion. Accordingly, you may find the defendant guilty of first degree murder (Type B) only if you also find the defendant guilty of home invasion. If you find the defendant not guilty of home invasion, then you must find the defendant not guilty of first degree murder (Type B).

**[7.01 (modified)]**

A person commits the offense of first degree murder (Type A) when he kills an



individual without lawful justification if, in performing the acts which caused the death, he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

**[7.03 (modified)]**

A mitigating factor exists so as to reduce the offense of first degree murder (Type A) to the lesser offense of second degree murder if, at the time of the killing, the defendant acts under a sudden and intense passion resulting from serious provocation by the deceased. Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

**[7.05 (modified)]**

A mitigating factor exists so as to reduce the offense of first degree murder (Type A) to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

**[7.06 (modified)]**

To sustain either the charge of first degree murder (Type A) or the charge of second degree murder, the State must prove the following propositions:

*First Proposition:* That the defendant performed the acts which caused the death of Henry Baxter; and

*Second Proposition:* That when the defendant did so, he intended to kill or do great bodily harm to Henry Baxter;

or

he knew that such acts would cause death to Henry Baxter;

or

he knew that such acts created a strong probability of death or great bodily harm to Henry Baxter;

and

*Third Proposition:* That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end, and you should return a verdict of not guilty of first degree murder (Type A).

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder (Type A).

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder (Type A). By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that either of the following mitigating factors is present:

that the defendant, at the time he performed the acts which caused the death of Henry Baxter, acted under a sudden and intense passion resulting from serious provocation by the deceased,

or

that the defendant, at the time he performed the acts which caused the death of Henry Baxter, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder (Type A), you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder (Type A), you should find the defendant guilty of first degree murder (Type A).

[24-25.06]

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force. However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself.

[24-25.09]

A person who initially provokes the use of force against himself is justified in the use of force only if the force used against him is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape the danger other than the use of force which is likely to cause death or great bodily harm to the other person.

**[24-25.10]**

A person is not justified in the use of force if he is attempting to commit or committing home invasion.

**[26.01B (modified)]**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of first degree murder (Type A). Under the law, a person charged with first degree murder (Type A) may be found (1) not guilty of first degree murder (Type A); or (2) guilty of first degree murder (Type A); or (3) guilty of second degree murder.

Accordingly, you will be provided with three verdict forms: “not guilty of first degree murder (Type A),” “guilty of first degree murder (Type A),” and “guilty of second degree murder.”

From these three verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other two verdict forms. Sign only one of these verdict forms.

The defendant is also charged with the offense of first degree murder (Type B). You will receive two forms of verdict as to this charge. You will be provided with both a “not guilty of first degree murder (Type B),” and a “guilty of first degree murder (Type B)” form of verdict.

From these two verdict forms, you should select the one verdict form that reflects your verdict pertaining to the charge of first degree murder (Type B) and sign it as I have stated. You should not write at all on the other verdict form pertaining to the charge of first degree murder (Type B).

The defendant is also charged with the offense of home invasion. You will receive two forms of verdict as to this charge. You will be provided with both a “not guilty of home invasion,” and a “guilty of home invasion” form of verdict.

From these two verdict forms, you should select the one verdict form that reflects your verdict pertaining to the charge of home invasion and sign it as I have stated. You should not write at all on the other verdict form pertaining to the charge of home invasion.

**[26.02]**

We, the jury, find the defendant Lester Williams not guilty of first degree murder (Type B).

---

Foreperson

---

[Lines for eleven other jurors]



[26.05]

We, the jury, find the defendant Lester Williams guilty of first degree murder (Type B).

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Lester Williams not guilty of first degree murder (Type A).

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Lester Williams guilty of first degree murder (Type A).

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Lester Williams guilty of second degree murder.

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Lester Williams not guilty of home invasion.

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Lester Williams guilty of home invasion.

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
[Lines for eleven other jurors]



NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.05)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. Lester Williams not guilty of first degree murder (Type B. [26.02]
2. Lester Williams guilty of first degree murder (Type B. [26.05]

Indicate your unanimous verdict by checking only one of the choices above

---

Foreperson

---

[Lines for eleven other jurors]

(Set 27.05)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. \_\_\_\_\_ Lester Williams not guilty of first degree murder (Type A).  
[26.02]
2. \_\_\_\_\_ Lester Williams guilty of first degree murder (Type A).  
[26.05]
3. \_\_\_\_\_ Lester Williams guilty of second degree murder. [26.05]

Indicate your unanimous verdict by checking only one of the choices above

---

Foreperson

---

[Lines for eleven other jurors]

(Set 27.05)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. \_\_\_\_\_ Lester Williams not guilty of home invasion. [26.02]
2. \_\_\_\_\_ Lester Williams guilty of home invasion. [26.05]

Indicate your unanimous verdict by checking only one of the choices above

---

Foreperson

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[Lines for eleven other jurors]

## SET 27.06

### *Instructions Included within Set 27.06*

- 1.01 Functions of Court and Jury
- 1.02 Jury Sole Judges of Believability
- 1.03 Arguments of Counsel
- 2.01I Charge Against Defendant—1st and 2nd Degree Murder—  
Involuntary Manslaughter
- 2.02 Indictment/Information Not Evidence
- 2.03 (modified) Presumption of Innocence—Burden of Proof
- 2.03A Presumption of Innocence—Burden of Proof—1st and 2nd De-  
gree Murder
- 3.02 Definition of Circumstantial Evidence
- 7.01A Definition of 1st Degree Murder
- 7.05A Definition of Mitigating Factor—2nd Degree Murder—Belief in  
Justification
- 7.06A Issues Instruction—1st and 2nd Degree Murder—Belief in  
Justification—Justifiable Use of Force
- 7.07 Definition of Involuntary Manslaughter
- 5.01 Definition of Recklessness
- 7.08/24-25.06 A Issues Instruction—Involuntary Manslaughter—Justifiable Use  
of Force
- 7.15 Causation in Homicide Cases
- 26.01I Concluding Instruction—1st and 2nd Degree Murder—  
Involuntary Manslaughter
- 26.02 Verdict Form—Not Guilty
- 26.05 Verdict Form—Guilty of 1st Degree Murder
- 26.05 Verdict Form—Guilty of 2nd Degree Murder
- 26.05 Verdict Form—Guilty of Involuntary Manslaughter

In the sixth case (Set 27.06), the defendant, Edward Grady, is charged with the first degree murder of James Ross. The State's evidence shows that Grady and Ross lived in the same neighborhood and had a long-standing feud. On the evening in question, the feud became more heated, and Grady shot Ross, stating, "I'm not going to put up with your taunts any longer."

Grady testifies that he feared for his life because of Ross' previous threats and violent behavior toward him. Grady claims that on the evening in question, he was carrying a gun only because the day before Ross had threatened to beat Grady into the ground the next time Ross saw Grady. Grady testifies that he carried his father's gun on the night in question just for the purpose of scaring Ross away. Grady also testifies that he had been told and believed that the gun was always unloaded. Last, Grady testifies that he never intended to shoot Ross and that he was shocked when the gun went off.

Ross is hospitalized for six weeks after the shooting and undergoes surgery twice. Ross dies after the second surgery. Grady presents evidence that Ross' doctors

mishandled the case, that Ross' second surgery was due to malpractice during his first surgery, and that Ross might have recovered from his gunshot wounds but for this malpractice. The court instructs the jury on first degree murder, second degree murder, and involuntary manslaughter.

**27.06 First Degree Murder—Second Degree Murder—Involuntary  
Manslaughter—(Defendant Is Edward Grady)**

**[1.01]**

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

**[1.02]**

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.



You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

**[1.03]**

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

**[2.011]**

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

**[2.02]**

The charge against the defendant[s] in this case is contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

**[2.03 (modified)]**

The defendant is presumed to be innocent of the charge against him of involuntary manslaughter. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

**[2.03A]**

The defendant is presumed to be innocent of the charge against him of first degree murder. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder. In deciding whether a



mitigating factor is present, you should consider all of the evidence bearing on this question.

[3.02]

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

[7.01]

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which caused the death,  
he intends to kill or do great bodily harm to that individual; or  
he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

[7.05]

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

[7.06]

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

*First Proposition:* That the defendant performed the acts which caused the death of James Ross; and

*Second Proposition:* That when the defendant did so,  
he intended to kill or do great bodily harm to James Ross;

or

he knew that such acts would cause death to James Ross;

or

he knew that such acts created a strong probability of death or great bodily harm to James Ross;

and

*Third Proposition:* That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations should

end, and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of James Ross, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

[7.07]

A person commits the offense of involuntary manslaughter when he unintentionally causes the death of an individual without lawful justification by acts which are performed recklessly and are likely to cause death or great bodily harm to another.

[5.01]

A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

[7.08/24-25.06A]

To sustain the charge of involuntary manslaughter, the State must prove the following propositions:

*First Proposition:* That the defendant performed the acts which caused the death of James Ross; and

*Second Proposition:* That the defendant performed those acts recklessly; and

*Third Proposition:* That those acts were likely to cause death or great bodily harm; and

*Fourth Proposition:* That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[7.15]

In order for you to find that the acts of the defendant caused the death of James Ross, the State must prove beyond a reasonable doubt that defendant's acts were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.

[26.011]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

Accordingly, you will be provided with four verdict forms: "not guilty," "guilty of first degree murder," "guilty of second degree murder," and "guilty of involuntary manslaughter."

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first



degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

At the conclusion of your deliberations, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

[26.02]

We, the jury, find the defendant Edward Grady not guilty.

Foreperson

[Lines for eleven other jurors]

We, the jury, find the defendant Edward Grady guilty of first degree murder.

Foreperson

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Edward Grady guilty of second degree murder.

Foreperson

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Edward Grady guilty of involuntary manslaughter.

Foreperson

[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS

(Set 27.06)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:



1. \_\_\_\_\_ Edward Grady not guilty. [26.02]
2. \_\_\_\_\_ Edward Grady guilty of first degree murder. [26.05]
3. \_\_\_\_\_ Edward Grady guilty of second degree murder. [26.05]
4. \_\_\_\_\_ Edward Grady guilty of involuntary manslaughter. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

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Foreperson

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[Lines for eleven other jurors]

## SET 27.07

### *Instructions Included within Set 27.07*

1.02	Jury Sole Judges of Believability
1.03	Arguments of Counsel
1.05	Jury Notetaking
2.01Q (modified)	Charge Against Defendant—Possession With Intent to Deliver 400 Grams or More of a Substance Containing Cocaine—Jury Instructed on Lesser Included Offenses—Jury Not Instructed on Any Other Charge
2.03	Presumption of Innocence—Burden of Proof
3.02	Definition of Circumstantial Evidence
4.16	Possession
5.01A	Intent
5.01B	Knowledge
17.17	Definition of Delivery of a Controlled Substance Weighing 400 Grams or More
17.05A	Definition of Deliver
17.18	Issues Instruction—Delivery of a Controlled Substance Weighing 400 Grams or More
17.17	Definition of Delivery of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
17.18	Issues Instruction—Delivery of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
17.19	Definition of Possession of a Controlled Substance Weighing 400 Grams or More
17.20	Issues Instruction—Possession of a Controlled Substance Weighing 400 Grams or More
17.19	Definition of Possession of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
17.20	Issues Instruction—Possession of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
26.01Q (modified)	Concluding Instruction—Possession With Intent to Deliver 400 Grams or More of a Substance Containing Cocaine—Jury Instructed on Lesser Included Offenses—Jury Not Instructed on Any Other Charge
26.02	Verdict Form—Not Guilty
26.05	Verdict Form—Guilty of Possession With Intent to Deliver 400 Grams or More of a Substance Containing Cocaine
26.05	Verdict Form—Guilty of Possession With Intent to Deliver One Gram or More But Less Than 15 Grams of a Substance Containing Cocaine
26.05	Verdict Form—Guilty of Possession of 400 Grams or More of a Substance Containing Cocaine
26.05	Verdict Form—Guilty of Possession of One Gram or More But Less Than 15 Grams of a Substance Containing Cocaine

In the seventh case (Set 27.07), the defendant, Karen Scott, is charged by indictment with the offense of possession with the intent to deliver 400 grams or more of a substance containing cocaine. Evidence presented at trial revealed that the cocaine was found in two different rooms of a drug house allegedly run by Scott: 398 grams were found inside the freezer which was located in the kitchen, and 4 grams were found in a nightstand drawer in a bedroom. Near the freezer, the police also found some baggies and a jar of inositol. A small facial mirror, a razor, straw, and some letters addressed to Scott were found in the nightstand drawer.

Scott argues that none of the cocaine is hers. In the alternative, she argues that only the cocaine found in the nightstand drawer is hers. The State argues that all of the cocaine found in the house is Scott's and that the large quantity of cocaine, the baggies, and the inositol found in the kitchen are evidence of Scott's intent to deliver.

At Scott's request, the court instructs the jury on the lesser included offenses of possession with the intent to deliver more than one gram but less than 15 grams of a substance containing cocaine, possession of 400 grams or more of a substance containing cocaine, and possession of more than one gram but less than 15 grams of a substance containing cocaine. The court also decides to instruct the jury on notetaking.

**27.07 Possession With The Intent To Deliver A Controlled Substance Given  
With Lesser Included Offenses—(Defendant Is Karen Scott)**

**[1.01]**

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others. When I use the word "he" in these instructions, I mean a male or a female.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

You are not to concern yourself with possible punishment or sentence for the offense charged during your deliberations. It is the function of the trial judge to determine the sentence should there be a verdict of guilty.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.



You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

**[1.02]**

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his age, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

**[1.03]**

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

**[1.05]**

Those of you who took notes during trial may use your notes to refresh your memory during jury deliberations.

Each juror should rely on his or her recollection of the evidence. Just because a juror has taken notes does not necessarily mean that his or her recollection of the evidence is any better or more accurate than the recollection of a juror who did not take notes.

When you are discharged from further service in this case, your notes will be collected by the deputy and destroyed. Throughout that process, your notes will remain confidential and no one will be allowed to see them.

**[2.01Q (modified)]**

The defendant is charged with the offense of possession with the intent to deliver 400 grams or more of a substance containing cocaine. The defendant has pleaded not guilty. Under the law, a person charged with possession with the intent to deliver 400 grams or more of a substance containing cocaine may be found (1) not guilty; or (2) guilty of possession with the intent to deliver 400 grams or more of a substance containing cocaine; or (3) guilty of possession with the intent to deliver one gram or more but less than 15 grams of a substance containing cocaine; or (4) guilty of possession of 400 grams or more of a substance containing cocaine; or (5) guilty of possession of more than one gram but less than 15 grams of a substance containing cocaine.



**[2.02]**

The charge against the defendant in this case is contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

**[2.03]**

The defendant is presumed to be innocent of the charge against her. This presumption remains with her throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove her innocence.

**[3.02]**

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

**[4.16]**

Possession may be actual or constructive. A person has actual possession when she has immediate and exclusive control over a thing. A person has constructive possession when she lacks actual possession of a thing but she has both the power and the intention to exercise control over a thing either directly or through another person.

If two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, then each person has possession.

**[5.01A]**

A person intends to accomplish a result or engage in conduct when her conscious objective or purpose is to accomplish that result or engage in that conduct.

**[5.01B]**

A person knows the nature or attendant circumstances of her conduct when she is consciously aware that her conduct is of such a nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.

A person knows the result of her conduct when she is consciously aware that such result is practically certain to be caused by her conduct.

**[17.17]**

A person commits the offense of possession with intent to deliver a controlled substance when she knowingly possesses with intent to deliver a substance containing

a controlled substance and the substance containing the controlled substance weighs 400 grams or more.

[17.05A]

The word “deliver” means to transfer possession or to attempt to transfer possession.

The word “deliver” includes a constructive transfer of possession which occurs without an actual physical transfer. When the conduct or declarations of the person who has the right to exercise control over a thing is such as to effectively relinquish the right of control to another person, so that the other person is then in constructive possession, there has been a delivery.

A delivery may occur with or without the transfer or exchange of money, or with or without the transfer or exchange of other consideration.

[17.18]

To sustain the charge of possession with intent to deliver a controlled substance when the substance containing the controlled substance weighed 400 grams or more, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed with intent to deliver a substance containing cocaine, a controlled substance; and

*Second Proposition:* That the weight of the substance containing the controlled substance was 400 grams or more.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[17.17]

A person commits the offense of possession with intent to deliver a controlled substance when she knowingly possesses with intent to deliver a substance containing a controlled substance and the substance containing the controlled substance weighs one gram or more but less than 15 grams.

[17.18]

To sustain the charge of possession with intent to deliver a controlled substance when the substance containing the controlled substance weighed one gram or more but less than 15 grams, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed with intent to deliver a substance containing cocaine, a controlled substance; and

*Second Proposition:* That the weight of the substance containing the controlled substance was one gram or more but less than 15 grams.

If you find from your consideration of all the evidence that each one of these

propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[17.27]

A person commits the offense of possession of a controlled substance when she knowingly possesses a substance containing a controlled substance and the substance containing the controlled substance weighs 400 grams or more.

[17.28]

To sustain the charge of possession of a controlled substance when the substance containing the controlled substance weighed 400 grams or more, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed a substance containing cocaine, a controlled substance; and

*Second Proposition:* That the weight of the substance possessed was 400 grams or more.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[17.27]

A person commits the offense of possession of a controlled substance when she knowingly possesses a substance containing a controlled substance and the substance containing the controlled substance weighs one gram or more but less than 15 grams.

[17.28]

To sustain the charge of possession of a controlled substance when the substance containing the controlled substance weighed one gram or more but less than 15 grams, the State must prove the following propositions:

*First Proposition:* That the defendant knowingly possessed a substance containing cocaine, a controlled substance; and

*Second Proposition:* That the weight of the substance possessed was one gram or more but less than 15 grams.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these



propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

**[26.01Q (modified)]**

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of possession with intent to deliver 400 grams or more of a substance containing cocaine. Under the law, a person charged with possession with intent to deliver 400 grams or more of a substance containing cocaine may be found (1) not guilty; or (2) guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine; or (3) guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine; or (4) guilty of possession of 400 grams or more of a substance containing cocaine; or (5) guilty of possession of more than one gram but less than 15 grams of a substance containing cocaine.

Accordingly, you will be provided with five verdict forms: “not guilty,” “guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine,” “guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine,” “guilty of possession of 400 grams or more of a substance containing cocaine,” and “guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine.”

From these five verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other four verdict forms. Sign only one of these verdict forms.

If you find the State has proved the defendant guilty of both possession with intent to deliver 400 grams or more of a substance containing cocaine and possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine, you should select the verdict form finding the defendant guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine.

If you find that the State has not proved the defendant guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine, but you find that the State has proved defendant guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine, you should select the verdict form finding the defendant guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine and sign it as I have stated. Under these circumstances, do not sign either of the verdict forms finding the defendant guilty of possession of 400 grams or more of a substance containing cocaine or guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine.



If you find that the State has not proved the defendant guilty of either charge of possession with intent to deliver a substance containing cocaine, but you find the State has proved defendant guilty of both possession of 400 grams or more of a substance containing cocaine and possession of one gram or more but less than 15 grams of a substance containing cocaine, you should select the verdict form finding the defendant guilty of possession of 400 grams or more of a substance containing cocaine and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine.

[26.02]

We, the jury, find the defendant Karen Scott not guilty.

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Foreperson

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[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine.

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Foreperson

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[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine.

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Foreperson

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[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession of 400 grams or more of a substance containing cocaine.

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Foreperson

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[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine.

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 Foreperson
 

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 [Lines for eleven other jurors]
 

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NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM CHAPTER 26. READ THE "INTRODUCTION" TO THIS CHAPTER FOR DETAILS.

(Set 27.07)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. \_\_\_\_\_ Karen Scott not guilty. [26.02]
2. \_\_\_\_\_ Karen Scott guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine. [26.05]
3. \_\_\_\_\_ Karen Scott guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine. [26.05]
4. \_\_\_\_\_ Karen Scott guilty of possession of 400 grams or more of a substance containing cocaine. [26.05]
5. \_\_\_\_\_ Karen Scott guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

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 Foreperson
 

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 [Lines for eleven other jurors]
 

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## Chapter 28.00 To 28A.00

# ENHANCEMENT/EXTENDED TERM SENTENCING

### SYNOPSIS

#### I. UNITARY INSTRUCTIONS

- 28.00 Introduction To The Enhancement/Extended Term Sentencing Instructions
- 28.01 Enhancement/Extended Term Factor(S)
- 28.02 Enhancement/Extended Term Factor(S) Presumption Of Innocence—Reasonable Doubt—Burden Of Proof
- 28.03 Issues In Enhancement/Extended Term Factor(S)
- 28.04 Enhancement/Extended Term Factor(S)—Concluding Instruction
- 28.05 Verdict—Allegation Not Proven
- 28.06 Verdict—Allegation Proven

#### II. BIFURCATED INSTRUCTIONS

- 28A.01 Nature Of The Hearing, Duties Of The Jury And Functions Of The Court
- 28A.02 General Instructions
- 28A.03 Enhancement/Extended Term Factor(S)—Concluding Instruction



## I. UNITARY INSTRUCTIONS

### 28.00 Introduction To The Enhancement/Extended Term Sentencing Instructions

In *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that any fact, other than a prior conviction, increasing the penalty for an offense beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.

The sentencing enhancements set forth in 730 ILCS 5/5-8-1(a)(1)(d) (West 2006), along with the extended term factors in 730 ILCS 5/5-5-3.2(b) (West 2006) and the natural life enhancement factors for first degree murder set forth in 730 ILCS 5/5-8-1(a)(1)(b) and (c) (West 2006) are included in these instructions.

730 ILCS 5/5-8-1(a)(1)(d) (West 2006) provides:

- (d)(i) if the person committed the offense while armed with a firearm, 15 years shall be added to the term of imprisonment imposed by the court;
- (ii) if, during the commission of the offense, the person personally discharged a firearm, 20 years shall be added to the term of imprisonment imposed by the court;
- (iii) if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.

In *People v. Sharpe*, 216 Ill.2d 481, 298 Ill.Dec. 169, 839 N.E.2d 492 (2005), the court held that the enhancement provisions in 730 ILCS 5/5-8-1(a)(1)(d) (West 2006) did not set forth disproportionate penalties, were not unconstitutionally vague, did not amount to improper double enhancements and did not violate due process in the context of first degree murder.

Extended term factors may also be contained in the statute creating the offense. For example, the defendant is eligible for an extended term when he is convicted of aggravated battery, domestic battery, aggravated domestic battery, unlawful restraint or aggravated unlawful restraint in the presence of a child. 720 ILCS 5/12-3.2(c) (West 2006). The defendant is also eligible for an extended term sentence when he is convicted of predatory criminal sexual assault of a child. 720 ILCS 5/12-14.1 (West 2006). In addition, the defendant is eligible for an extended term when he is convicted of solicitation to commit murder and the person solicited was under the age of 17 years. 720 ILCS 5/8-1.1(b) (West 2006). The Committee has drafted instructions for use in such cases. See Instructions 11.103, 11.104, 28.01[12], 28.01[13], 28.03[12], 28.03[13], 28.04[12] and 28.04[13].

In other instances, extended term factors may already be included in instructions applicable to the offense. Examples include aggravated discharge of a firearm, Instruction 18.13, aggravated battery with a firearm, Instruction 18.14, and cannabis and controlled substance offenses, Instruction 17.00 *et seq.*

For an enhancement/extended term factor to be submitted to the jury, the enhancement/extended term factor must be included in the charging instrument or otherwise provided to the defendant through written notification before trial. 725 ILCS 5/111-3(c-5) (West 2006). The jury should be instructed on every enhancement/extended term factor at issue when there is sufficient evidence of that enhancement/extended term factor to submit to the jury.

Enhancement/extended term factors based on prior convictions need not be proven beyond a reasonable doubt to a jury and are to be determined by the court at sentencing. *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998). These instructions do not include enhancement/extended term factors based on prior convictions. Examples of prior conviction enhancement/extended term factors not submitted to the jury are set forth in 730 ILCS 5/5-5-3.2(b)(1) and (11) (West 2006).

The defendant is eligible for an extended term sentence when he is convicted of voluntary manslaughter, second degree murder, involuntary manslaughter or reckless homicide in which the defendant has been convicted of causing the death of more than one individual. 730 ILCS 5/5-5-3.2(b)(3) (West 2006). These instructions do not cover this situation because the applicability of the extended term provision will be evident from the verdicts.

There may be cases in which the charging instrument or written notice describes more than one enhancement/extended term factor. In such cases, separate issues instructions under § 28.03 and separate verdict forms should be given for each enhancement/extended term factor.

Because of amendments providing enhancement/extended term factors, the Committee cautions the court and counsel to check the effective date of a particular enhancement/extended term factor to ensure it was enacted before the defendant committed the offense.

*Apprendi* did not address whether the enhancement/extended term factor hearing should be conducted as part of a unitary trial or in bifurcated proceedings. In *People v. Norwood*, 362 Ill.App.3d 1121, 1137, 299 Ill.Dec. 102, 118, 841 N.E.2d 514, 530 (1st Dist. 2005), the court held that the Illinois statutes codifying the principles of *Apprendi* in extended term sentencing situations do not give defendants the option to bifurcate the issues of guilt and “wanton cruelty” or to have those issues decided by different fact finders and that *Apprendi* does not create such a right. See also *People v. Bowman*, 357 Ill.App.3d 290, 299, 293 Ill.Dec. 181, 191, 827 N.E.2d 1062, 1071 (1st Dist. 2005) (regarding the issues of guilt and the age of the victim as an enhancement factor).

The Committee recommended to the Illinois Supreme Court Rules Committee the adoption of a rule that provides for unitary trials, as well as bifurcated trials in limited circumstances. The Illinois Supreme Court Rules Committee adopted Illinois Supreme Court Rule 451(g), effective July 1, 2006, which provides:

Proceedings When an Enhanced Sentence is Sought. When the death penalty is not being sought and the State intends, for the purpose of sentencing, to rely on one or more sentencing enhancement factors which are subject to the notice and proof requirements of section 111-3(c-5) of the Code of Criminal Procedure,



the court may, within its discretion, conduct a unitary trial through verdict on the issue of guilt and on the issue of whether a sentencing enhancement factor exists. The court may also, within its discretion, upon motion of a party, conduct a bifurcated trial. In deciding whether to conduct such a bifurcated trial, the court must first hold a pretrial hearing to determine if proof of the sentencing enhancement factor is not relevant to the question of guilt or if undue prejudice outweighs the factor's probative value. Such bifurcated trial shall be conducted subject to the following:

(1) The court shall first conduct a trial through verdict on the issue of guilt under the procedures applicable to trials in other cases.

(2) If a guilty verdict is rendered, the court shall then conduct a separate proceeding before the same jury or before the court if a jury was waived at trial or is waived for purposes of the separate proceeding. This separate proceeding shall be confined to the issue of whether the sentencing enhancement factor exists. The order in which the parties may present evidence and argument and the rules governing admission of evidence shall be the same as at trial, with the burden remaining on the State to prove the factor beyond a reasonable doubt. After the evidence is closed, the submission and giving of instructions shall proceed in accordance with paragraphs (a), (b), (c) and (d) of this rule.

(3) The court may enter a directed verdict or judgment notwithstanding the verdict respecting any fact at issue in the separate proceeding.

Because a bifurcated trial “generally causes additional inconvenience to the jury, the witnesses, and/or the parties, and causes additional cost to the parties and/or the taxpayers,” the Committee Comments to Rule 451(g) make “unitary trials the presumptive option.” Ill. Sup. Ct. R. 451(g), Committee Comments.

**28.01 Enhancement/Extended Term Factor(S)**

The State has also alleged that

[1] during the commission of the offense of \_\_\_\_\_ the defendant [(was armed with a firearm) (personally discharged a firearm) (personally discharged a firearm that proximately caused [great bodily harm] [permanent disability] [permanent disfigurement] [death] to another person)].

[or]

[2] when the defendant committed the offense of \_\_\_\_\_ the \_\_\_\_\_ was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

[3] the defendant committed the offense of \_\_\_\_\_ against a person [(under 12 years of age) (60 years of age or older) (physically handicapped)] at the time of the offense (or against such person's property).

[or]

[4] when the defendant committed the offense of [(aggravated criminal sexual assault) (criminal sexual assault)], the offense was committed on the same victim by one or more other individuals and the defendant voluntarily participated in the crime with the knowledge of the participation of the others in the crime and the commission of the crime was part of a single course of conduct during which there was no substantial change in the nature of the criminal objective.

[or]

[5] \_\_\_\_\_ was under 18 years of age at the time of the commission of the aggravated criminal sexual assault.

[or]

[6] when the \_\_\_\_\_ was committed by the defendant the \_\_\_\_\_ involved [(any) (the following type(s) of)] misconduct committed as part of a ceremony, rite, initiation, observance, performance, practice or activity of any actual or ostensible religious, fraternal or social group [(the brutalizing or torturing of humans or animals) (the theft of human corpses) (the kidnapping of humans) (the desecration of any cemetery, religious, fraternal, business, governmental, educational, or other building or property) (ritualized abuse of a child)].

[or]

[7] the defendant committed the offense of \_\_\_\_\_ under an agreement with two or more other persons to commit that offense and the defendant, with respect to the other individuals, occupied a position of organizer, supervisor, financier, or any other position of management or leadership and the commission of the offense of \_\_\_\_\_ was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's leadership in an organized gang.

[or]

[8] when the defendant committed the offense of unlawful use of weapons the



defendant was a member of an organized gang.

[or]

[9] when the defendant committed the offense of \_\_\_\_\_ he used a firearm with a laser sight attached to it.

[or]

[10] when the defendant committed the offense of \_\_\_\_\_ an emergency response officer in the performance of his duties is killed or injured at the scene of the offense while responding to the emergency caused by the commission of the offense.

[or]

[11] when the defendant committed the offense of \_\_\_\_\_ the defendant [(used), (possessed), (exercised control over), (or) (otherwise directed)] an animal to assault a law enforcement officer [(engaged in the execution of his official duties) (or) (in furtherance of the criminal activities of an organized gang in which the defendant is engaged)].

[or]

[12] the defendant committed the offense of [(aggravated battery) (domestic battery) (aggravated domestic battery) (unlawful restraint) (aggravated unlawful restraint)] in the presence of a child.

[or]

[13] when the defendant committed the offense of solicitation of murder the person solicited was a person under the age of 17 years.

[or]

[14] when the defendant committed the offense of first degree murder

a) the defendant had attained the age of 17 or more and the defendant murdered an individual under 12 years of age.

[or]

b) the defendant murdered a [(peace officer) (fireman) (emergency management worker)] when the [(police officer) (fireman) (emergency management worker)] was killed [(in the course of performing his official duties) (to prevent the [(police officer) (fireman) (emergency management worker)] from performing his official duties) (in retaliation for the [(police officer) (fireman) (emergency management worker)] from performing his official duties)] and the defendant knew or should have known that the murdered individual was a [(police officer) (fireman) (emergency management worker)].

[or]

c) the defendant murdered an employee of an institution or facility of the Department of Corrections or any similar local correctional agency, and the employee was killed [(in the course of performing his official duties) (to prevent the employee from performing his official duties) (in retaliation for the employee performing his official duties)].

[or]

d) the defendant murdered an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistance or first aid person) while employed by a municipality or other governmental unit when the person was killed [(in the course of performing official duties) (to prevent the person from performing official duties) (in retaliation for performing official duties)] and the defendant knew or should have known that the murdered individual was an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistant or first aid personnel)].

[or]

e) the defendant murdered a person under 12 years of age and the murder was committed during the course of [(aggravated criminal sexual assault) (criminal sexual assault) (aggravated kidnapping)].

[or]

f) the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer.

[or]

[15] the defendant at the time of the commission of the offense of first degree murder had attained the age of 18 or more; and

a) the murdered person was killed as a result of the hijacking of [(a) (an)] [(airplane) (train) (ship) (bus) (public conveyance)].

[or]

b) the defendant [(committed the murder pursuant to a contract, agreement, or understanding by which he was to receive money or anything of value in return for committing the murder) (procured another to commit the murder for money or anything of value)].

[or]

c) the murdered person was killed in the course of another felony if

[1] [(the murdered person was actually killed by the defendant);

[or]

(the murdered person received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible and the physical injuries inflicted by either the defendant or other person(s) for whose conduct he is legally responsible caused the death of the murdered person);]

and

[2] in performing the acts which caused the death of the murdered individual or

which resulted in physical injuries personally inflicted by the defendant on the murdered individual substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered person (or another);

and

[3] the other felony [(was) (was one or more of the following:)] [(armed robbery) (robbery) (armed violence) (predatory criminal sexual assault of a child) (aggravated criminal sexual assault) (aggravated kidnapping) (aggravated vehicular hijacking) (aggravated arson) (aggravated stalking) (residential burglary) (home invasion) [or] the attempt to commit \_\_\_\_\_)].

[or]

d) the murdered person was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

e) the defendant committed the murder with intent to prevent the murdered person from [(testifying or participating in any criminal investigation or prosecution) (giving material assistance to the State in any investigation or prosecution, either against the defendant or another)].

[or]

f) the defendant committed the murder because the murdered person was a witness in any prosecution or gave material assistance to the State in any investigation or prosecution, either against the defendant or another.

[or]

g) the defendant, while [(committing the offense of \_\_\_\_\_) (engaged in a [(conspiracy) (solicitation)] to commit the offense of \_\_\_\_\_)],

[i] (intentionally killed an individual)

[or]

[ii] [((counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

h) the defendant was incarcerated in an institution or facility of the Department of Corrections at the time of the murder, and while [(committing the offense of \_\_\_\_\_) (engaged in a [(conspiracy) (solicitation)] to commit the offense of \_\_\_\_\_)], defendant

[i] (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].



[or]

i) the murder was committed in a cold, calculated, and premeditated manner pursuant to a preconceived plan, scheme, or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom.

[or]

j) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant [(counseled) (commanded) (induced) (procured) (caused)] the intentional killing of the murdered person.

[or]

k) the murder was intentional and involved the infliction of torture.

[or]

l) the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle.

[or]

m) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

n) the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled.

[or]

o) the murdered person was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act.

[or]

p) the murdered person was known by the defendant to be a [(teacher) (person)] employed in any school and the [(teacher) (employee)] is upon [(the grounds of a school) (the grounds adjacent to a school) (any part of a building used for school purposes)].

[or]

q) the murder was committed by the defendant [(in connection with) (as a result of)] the offense of terrorism.

The defendant has denied [(the) (these)] allegation(s)

#### Committee Note

Give this instruction in addition to the applicable 2.01 series instruction and



immediately after the applicable § 2.01 series instruction.

Give Instruction 28.02.

Give Instruction 28.03.

Give Instruction 28.04.

If the charging instrument or written notice charges more than one enhancement/extended term factor include each enhancement/extended term factor and add the word “and” between them. The “ors” are provided for differentiation and should not be included in the instruction submitted to the jury.

*Enhancement/Extended Term Factor [1]* 730 ILCS 5/5-8-1(a)(1)(d) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[1] for the definition of term “personally discharged a firearm.”

*Enhancement/Extended Term Factor [2]* 730 ILCS 5/5-5-3.2(b)(2) (West 2006); 730 ILCS 5/5-8-1(a)(1)(b) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[2] for the definitions of the words “brutal” and “heinous” and the term “wanton cruelty.”

*Enhancement/Extended Term Factor [3]* 730 ILCS 5/5-5-3.2(b)(4) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material.

*Enhancement/Extended Term Factor [4]* 730 ILCS 5/5-5-3.2(b)(5) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), or criminal sexual assault under 720 ILCS 5/12-13 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material.

*Enhancement/Extended Term Factor [5]* 730 ILCS 5/5-5-3.2(c) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Insert in the blank as indicated the name of the victim. Appropriate modifications should be made when there is more than one victim. Use applicable bracketed material.

*Enhancement/Extended Term Factor [6]* 730 ILCS 5/5-5-3.2(b)(6) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. When more than one alternative is alleged in the charging document, the word “and” should be inserted between them.

*Enhancement/Extended Term Factor [7]* 730 ILCS 5/5-5-3.2(b)(8) (West 2006). This factor does not apply when the defendant is charged with conspiracy. Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03 [7] for the definition of the term “organized gang.”

*Enhancement/Extended Term Factor [8]* 730 ILCS 5/5-5-3.2(b)(9) (West 2006). This factor applies only when the defendant is charged with felony unlawful use of

weapons under 720 ILCS 5/24-1 (West 2006). See Instruction 28.03[8] for the definition of the term “organized gang.”

*Enhancement/Extended Term Factor [9]* 730 ILCS 5/5-5-3.2(b)(10) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03 [9] for the definitions of the terms “laser sight” and “laser pointer”

*Enhancement/Extended Term Factor [10]* 730 ILCS 5/5-5-3.2(b)(12) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[10] for the definitions of the word “emergency” and the term “emergency response officer.”

*Enhancement/Extended Term Factor [11]* 730 ILCS 5/5-5-3.2(b)(13) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[11] for the definition of the term “organized gang.”

*Enhancement/Extended Term Factor [12]* 720 ILCS 5/12-3.2(c) (West 2006). Use applicable bracketed material. See Instruction 28.03[12] for the definitions of the word “child” and the term “presence of a child.”

*Enhancement/Extended Term Factor [13]* 720 ILCS 5/8-1.1(b) (West 2006). Use when the defendant is charged with solicitation to commit murder under 720 ILCS 5/8-1.1(a) and the charging instrument or written notice alleges that the person solicited was under the age of 17 years.

*Enhancement/Extended Term Factor [14]* 730 ILCS 5/5-8-1(a)(1)(c) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[14] for the definitions of the terms “emergency management worker,” “emergency medical technician-intermediate,” “emergency medical technician-paramedic” and “community policing volunteer.” Although 720 ILCS 5/2-6.5 (West 2006) states that the definition of the term “emergency medical technician-ambulance” is contained in the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50-1 et seq. (West 2006), the Committee could find no statutory definition of the term “emergency medical technician-ambulance.”

*Enhancement/Extended Term Factor [15]* 730 ILCS 5/5-8(b)(1) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[15] for the definitions of the words “brutal,” “heinous,” “torture,” and “cold” and the terms “wanton cruelty” and “disabled person” and the phrase “calculated and premeditated manner pursuant to a preconceived, plan, scheme or design.”

The numbers and brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

**28.02 Enhancement/Extended Term Factor(S) Presumption Of Innocence—Reasonable Doubt—Burden Of Proof**

The State has alleged that [Insert the appropriate enhancement/extended term factor(s).]. The defendant is presumed to be innocent of [(this) (these)] allegations(s). This presumption remains with [(the defendant) (each defendant)] throughout every stage of the trial and during your deliberation on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the allegation(s) [(is) (are)] proven.

The State has the burden of proving the allegation(s) beyond a reasonable doubt and this burden remains on the State throughout the case.

[(The) (A)] defendant is not required to disprove [(the) (these)] allegations(s).

**Committee Note**

Give this instruction in addition to the applicable 2.03 series instruction and immediately after the applicable 2.03 series instruction.

Give Instruction 28.01.

Give Instruction 28.03.

Give Instruction 28.04.

Insert in the blank the applicable enhancement/extended term factor specifically charged in the charging instrument or written notice.

If the charging instrument or written notice charges more than one enhancement/extended term factor include each enhancement/extended term factor and add the word “and” between them.

Use applicable bracketed material.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.



**28.03 Issues In Enhancement/Extended Term Factor(S)**

To sustain the allegation made in connection with the offense of \_\_\_\_\_, the State must prove the following proposition:

That

[1] during the commission of the offense of \_\_\_\_\_ the defendant [(was armed with a firearm) (personally discharged a firearm) (personally discharged a firearm that proximately caused [great bodily harm] [permanent disability] [permanent disfigurement] [death] to another person.) [A person is considered to have “personally discharged a firearm” when he, while armed with a firearm, knowingly and intentionally fires a firearm causing the ammunition projectile to be forcefully expelled from the firearm].

[or]

[2] when the defendant committed the offense of \_\_\_\_\_ the \_\_\_\_\_ was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. The word “brutal” means cruel and cold blooded, grossly ruthless, or devoid of mercy or compassion. The word “heinous” means enormously and flagrantly criminal, hatefully or shockingly evil, or grossly bad. The term “wanton cruelty” means consciously seeking to inflict pain and suffering on the victim of the offense.

[or]

[3] the defendant committed the offense of \_\_\_\_\_ against a person [(under 12 years of age) (60 years of age or older) (physically handicapped)] at the time of the offense (or against such person’s property).

[or]

[4] when the defendant committed the offense of [(aggravated criminal sexual assault) (criminal sexual assault)], the offense was committed on the same victim by one or more other individuals and the defendant voluntarily participated in the crime with the knowledge of the participation of the others in the crime and the commission of the crime was part of a single course of conduct during which there was no substantial change in the nature of the criminal objective.

[or]

[5] \_\_\_\_\_ was under 18 years of age at the time of the commission of the aggravated criminal sexual assault.

[or]

[6] when the \_\_\_\_\_ was committed by the defendant the \_\_\_\_\_ involved [(any) (the following type(s) of)] misconduct committed as part of a ceremony, rite, initiation, observance, performance, practice or activity of any actual or ostensible religious, fraternal or social group [(the brutalizing or torturing of humans or animals) (the theft of human corpses) (the kidnapping of human) (the desecration of any cemetery, religious, fraternal, business, governmental, educational, or other building or property) (ritualized abuse of a child)].



[or]

[7] the defendant committed the offense of \_\_\_\_\_ under an agreement with two or more other persons to commit that offense and the defendant, with respect to the other individuals, occupied a position of organizer, supervisor, financier, or any other position of management or leadership and the commission of the offense of \_\_\_\_\_ was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's leadership in an organized gang. The term "organized gang" means any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three or more persons with an established hierarchy that through its membership or through the agency of any member engages in a course or pattern of criminal activity.

[or]

[8] when the defendant committed the offense of unlawful use of weapons the defendant was a member of an organized gang. The term "organized gang" means any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three or more persons with an established hierarchy that through its membership or through the agency of any member engages in a course or pattern of criminal activity.

[or]

[9] when the defendant committed the offense of \_\_\_\_\_ he used a firearm with a laser sight attached to it. The term "laser sight" means a laser pointer that can be attached to a firearm and can be used to improve the accuracy of the firearm. A "laser pointer" means a hand-held device that emits light amplified by the stimulated emission of a radiation that is visible to the human eye.

[or]

[10] when the defendant committed the offense of \_\_\_\_\_ an emergency response officer in the performance of his duties is killed or injured at the scene of the offense while responding to the emergency caused by the commission of the offense. The word "emergency" means a situation in which a person's life, health, or safety is in jeopardy. The term "emergency response officer" means a peace officer, community policing volunteer, fireman, emergency medical technician—ambulance, emergency medical technician—intermediate, emergency medical technician—paramedic, ambulance driver, other medical assistance or first aid personnel, or hospital emergency room personnel.

[or]

[11] when the defendant committed the offense of \_\_\_\_\_ the defendant [(used), (possessed), (exercised control over), (or) (otherwise directed)] an animal to assault a law enforcement officer [(engaged in the execution of his official duties) (or) (in furtherance of the criminal activities of an organized gang in which the defendant is engaged)]. [The term "organized gang" means any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three or more persons with an established hierarchy that, through its

membership or through the agency of any member engages in a course or pattern of criminal activity].

[or]

[12] the defendant committed the offense of [(aggravated battery) (domestic battery) (aggravated domestic battery) (unlawful restraint) (aggravated unlawful restraint)] in the presence of a child. A “child” means a person under 18 years of age who is the defendant’s or victim’s child or step child or who is a minor child residing within or visiting the household of the defendant or victim. “In the presence of a child” means in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act constituting [(aggravated battery) (domestic battery) (aggravated domestic battery) (unlawful restraint) (aggravated unlawful restraint)].

[or]

[13] when the defendant committed the offense of solicitation of murder the person solicited was a person under the age of 17 years.

[or]

[14] when the defendant committed the offense of first degree murder

a) the defendant had attained the age of 17 or more and the defendant murdered an individual under 12 years of age.

[or]

b) the defendant murdered a [(peace officer) (fireman) (emergency management worker)] when the [(police officer) (fireman) (emergency management worker)] was killed [(in the course of performing his official duties) (to prevent the [(police officer) (fireman) (emergency management worker)] from performing his official duties)] (in retaliation for the [(police officer) (fireman) (emergency management worker)] from performing his official duties)] and the defendant knew or should have known that the murdered individual was a [(police officer) (fireman) (emergency management worker)].

[The term “emergency management worker” means (any person, paid or unpaid, who is a member of a local or county emergency services and disaster agency as defined by the Illinois Emergency Management Agency Act, or who is an employee of the Illinois Emergency Management Agency or the Federal Emergency Management Agency) (any employee or volunteer of the Red Cross) (any employee of a federal, state, county or local government agency assisting an emergency services and disaster agency, the Illinois Emergency Management Agency, or the Federal Emergency Management Agency through mutual aid or as otherwise requested or directed in time of disaster or emergency) (any person volunteering or directed to assist an emergency services and disaster agency, the Illinois Emergency Management Agency, or the Federal Emergency Management Agency)].

[or]

c) the defendant murdered an employee of an institution or facility of the Department of Corrections or any similar local correctional agency, and the employee was killed



[(in the course of performing his official duties) (to prevent the employee from performing his official duties) (in retaliation for the employee performing his official duties)].

[or]

d) the defendant murdered an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistance or first aid person)] while employed by a municipality or other governmental unit when the person was killed [(in the course of performing official duties) (to prevent the person from performing official duties) (in retaliation for performing official duties)] and the defendant knew or should have known that the murdered individual was an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistant or first aid personnel)].

[The term “emergency medical technician-intermediate” means a person who has successfully completed a course of instruction in intermediate life support as prescribed by the Illinois Department of Public Health, is currently license by the Department, and practices within an Intermediate or Advanced Life Support EMS System].

[The term “emergency medical technician-paramedic” means a person, who has successfully completed a course of instruction in advanced life support care as prescribed by the Illinois Department of Public Health, is license by the Department and practices within an Advanced Life Support EMS System].

[or]

e) the defendant murdered a person under 12 years of age and the murder was committed during the course of [(aggravated criminal sexual assault) (criminal sexual assault) (aggravated kidnapping)].

[or]

f) the murder was committed by reason of any person’s activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer.

The term “community policing volunteer” means a person who is summoned or directed by a peace officer or any person actively participating in a community policing program and who is engaged in lawful conduct intended to assist any unit of government in enforcing any criminal or civil law. The term “community policing program” means any plan, system or strategy established by and conducted under the auspices of a law enforcement agency in which citizens participate with and are guided by the law enforcement agency and work with members of that agency to reduce or prevent crime within a defined geographic area.

[or]

[15] the defendant at the time of the commission of the offense of first degree murder had attained the age of 18 or more; and

a) the murdered person was killed as a result of the hijacking of [(a) (an)] [(airplane) (train) (ship) (bus) (public conveyance)].

[or]

b) the defendant [(committed the murder pursuant to a contract, agreement, or understanding by which he was to receive money or anything of value in return for committing the murder) (procured another to commit the murder for money or anything of value)].

[or]

c) the murdered person was killed in the course of another felony if

[1] [(the murdered person was actually killed by the defendant);

[or]

(the murdered person received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible and the physical injuries inflicted by either the defendant or other person(s) for whose conduct he is legally responsible caused the death of the murdered person);]

and

[2] in performing the acts which caused the death of the murdered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered person (or another);

and

[3] the other felony [(was) (was one or more of the following:)] [(armed robbery) (robbery) (armed violence) (predatory criminal sexual assault of a child) (aggravated criminal sexual assault) (aggravated kidnapping) (aggravated vehicular hijacking) (aggravated arson) (aggravated stalking) (residential burglary) (home invasion) [or] the attempt to commit \_\_\_\_\_)].

[or]

d) the murdered person was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty. The word "brutal" means cruel and coldblooded, grossly ruthless, or devoid of mercy or compassion. The word "heinous" means enormously and flagrantly criminal, hatefully or shockingly evil, or grossly bad. The term "wanton cruelty" means consciously seeking to inflict pain and suffering on the victim of the offense.

[or]

e) the defendant committed the murder with intent to prevent the murdered person from [(testifying or participating in any criminal investigation or prosecution) (giving material assistance to the State in any investigation or prosecution, either against the defendant or another)].



[or]

f) the defendant committed the murder because the murdered person was a witness in any prosecution or gave material assistance to the State in any investigation or prosecution, either against the defendant or another.

[or]

g) the defendant, while [(committing the offense of \_\_\_\_\_) (engaged in a [(conspiracy) (solicitation)]) to commit the offense of \_\_\_\_\_],

[i] (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

h) the defendant was incarcerated in an institution or facility of the Department of Corrections at the time of the murder, and while [(committing the offense of \_\_\_\_\_) (engaged in a [(conspiracy) (solicitation)]) to commit the offense of \_\_\_\_\_], defendant

[i] (intentionally killed an individual)

[or]

[ii] (counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

i) the murder was committed in a cold, calculated, and premeditated manner pursuant to a preconceived plan, scheme, or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom. “Cold” means not motivated by mercy or the emotion of the moment. “Calculated and premeditated manner pursuant to a preconceived, plan, scheme, or design” means deliberated or reflected upon for an extended period of time.

[or]

j) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant [(counseled) (commanded) (induced) (procured) (caused)] the intentional killing of the murdered person.

[or]

k) the murder was intentional and involved the infliction of torture. The word “torture” means the infliction of or subjection to extreme physical pain, motivated by an intent to increase or prolong the pain, suffering, or agony of the victim.

[or]

l) the murder was committed as a result of the intentional discharge of a firearm by

the defendant from a motor vehicle and the victim was not present within the motor vehicle.

[or]

m) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty. The word “brutal” means cruel and cold blooded, grossly ruthless, or devoid of mercy or compassion. The word “heinous” means enormously and flagrantly criminal, hatefully or shockingly evil, or grossly bad. The term “wanton cruelty” means consciously seeking to inflict pain and suffering on the victim of the offense.

[or]

n) the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled. A “disabled person” means a person who suffers from a permanent physical or mental impairment resulting from disease, an injury, a functional disorder, or a congenital condition that renders the person incapable of adequately providing for his or her own health or personal care.

[or]

o) the murdered person was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act.

[or]

p) the murdered person was known by the defendant to be a [(teacher) (person)] employed in any school and the [(teacher) (employee)] is upon [(the grounds of a school) (the grounds adjacent to a school) (any part of a building used for school purposes)].

[or]

q) the murder was committed by the defendant [(in connection with) (as a result of)] the offense of terrorism.

If you find from your consideration of all the evidence that the above proposition has been proved beyond a reasonable doubt, then you should sign the verdict form finding that the allegation was proven.

If you find from your consideration of all the evidence that the above proposition has not been proved beyond a reasonable doubt, then you should sign the verdict form finding that the allegation was not proven.

#### Committee Note

Give this instruction immediately after the issues instruction for the offense to which the enhancement/extended term factor applies.

Give Instruction 28.01.

Give Instruction 28.02.

Give Instruction 28.04.

When the charging instrument or written notice charges more than one enhancement/extended term factor, give a separate issues instruction for each enhancement/extended term factor.

The “ors” are provided for differentiation and should not be included in the instruction submitted to the jury.

*Enhancement/Extended Term Factor [1]* 730 ILCS 5/5-8-1(a)(1)(d) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. The definition of the term “personally discharged a firearm” is set forth in accordance with 720 ILCS 5/2-15.5 (West 2006).

*Enhancement/Extended Term Factor [2]* 730 ILCS 5/5-5-3.2(b)(2) (West 2006); 730 ILCS 5/5-8-1(a)(1)(b) (West 2006). Insert in both blanks the offense specifically charged in the charging instrument or written notice. The definitions of the words “brutal” and “heinous” are set forth in accordance with the Illinois Supreme Court’s discussion in *People v. Lucas*, 132 Ill.2d 399, 445, 139 Ill.Dec. 447, 466, 548 N.E.2d 1003, 1022 (1989). The definition of the term “wanton cruelty” is set forth in accordance with the Illinois Supreme Court’s discussion in *People v. Nitz*, 219 Ill.2d 400, 418, 302 Ill.Dec. 418, 436, 848 N.E.2d 982, 994 (2006). Wanton cruelty cannot be perpetrated on a corpse. *People v. Nielson*, 187 Ill.2d 271, 299, 718 N.E.2d 131, 148, 240 Ill.Dec. 650, 678 (1999).

*Enhancement/Extended Term Factor [3]* 730 ILCS 5/5-5-3.2(b)(4) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material.

*Enhancement/Extended Term Factor [4]* 730 ILCS 5/5-5-3.2(b)(5) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), or criminal sexual assault under 720 ILCS 5/12-13 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material.

*Enhancement/Extended Term Factor [5]* 730 ILCS 5/5-5-3.2(c) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Insert in the blank as indicated the name of the victim. Appropriate modifications should be made when there is more than one victim. Use applicable bracketed material.

*Enhancement/Extended Term Factor [6]* 730 ILCS 5/5-5-3.2(b)(6) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. When more than one alternative is alleged in the charging document, the word “and” should be inserted between them.

*Enhancement/Extended Term Factor [7]* 730 ILCS 5/5-5-3.2(b)(8) (West 2006). This factor does not apply when the defendant is charged with conspiracy. Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. The definition of the term “organized gang” is set forth in accordance with 740 ILCS 147/10 (West 2006).



*Enhancement/Extended Term Factor [8]* 730 ILCS 5/5-5-3.2(b)(9) (West 2006). This factor applies only when the defendant is charged with felony unlawful use of weapons under 720 ILCS 5/24-1 (West 2006). The definition of the term “organized gang” is set forth in accordance with 740 ILCS 147/10 (West 2006).

*Enhancement/Extended Term Factor [9]* 730 ILCS 5/5-5-3.2(b)(10) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. The definitions of the terms “laser sight” and “laser pointer” are set forth in accordance with 720 ILCS 24.6-5 (West 2006).

*Enhancement/Extended Term Factor [10]* 730 ILCS 5/5-5-3.2(b)(12) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. The definitions of the word “emergency” and the term “emergency response officer” are set forth in accordance with 730 ILCS 5/5-3.2(b)(12) (West 2006).

*Enhancement/Extended Term Factor [11]* 730 ILCS 5/5-5-3.2(b)(13) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. The definition of the term “organized gang” is set forth in accordance with 740 ILCS 147/10 (West 2006).

*Enhancement/Extended Term Factor [12]* 720 ILCS 5/12-3.2(c) (West 2006). Use applicable bracketed material. The definitions of the word “child” and the term “in the presence of a child” are set forth in accordance with 720 ILCS 5/12-3.2(c) (West 2006).

*Enhancement/Extended Term Factor [13]* 720 ILCS 5/8-1.1(b) (West 2006). Use when the defendant is charged with solicitation to commit murder under 720 ILCS 5/8-1.1(a) (West 2006), and the charging instrument or written notice alleges that the person solicited was under the age of 17 years.

*Enhancement/Extended Term Factor [14]* 730 ILCS 5/5-8-1(a)(1)(c) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. The definition of the term “emergency management worker” is set forth in accordance with 720 ILCS 5/2-6.6 (West 2006). The definitions of the terms “emergency medical technician-intermediate,” and “emergency medical technician paramedic” are set forth in accordance with 210 ILCS 50/3.50 (West 2006). The definitions of the terms “community policing volunteer” and “community policing program” are set forth in accordance with 720 ILCS 5/2-3.5 (West 2006). Although 720 ILCS 5/2-6.5 (West 2006) states that the definition of the term “emergency medical technician-ambulance” is contained in the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50-1 et seq. (West 2006), the Committee could find no statutory definition of the term “emergency medical technician-ambulance.”

*Enhancement/Extended Term Factor [15]* 730 ILCS 5/5-8(b)(1) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. The definitions of the words “brutal” and “heinous” are set forth in accordance with the Illinois Supreme Court’s discussion in *People v. Lucas*, 132 Ill.2d 399, 445, 139 Ill.Dec. 447, 466,



548 N.E.2d 1003, 1022 (1989). The definition of the term “wanton cruelty” is set forth in accordance with the Illinois Supreme Court’s discussion in *People v. Nitz*, 219 Ill.2d 400, 418, 302 Ill.Dec. 418, 436, 848 N.E.2d 982, 994 (2006). Wanton cruelty cannot be perpetrated on a corpse. *People v. Nielson*, 187 Ill.2d 271, 299, 718 N.E.2d 131, 148, 240 Ill.Dec. 650, 678 (1999). The definition of the word “torture” is set forth in accordance with 720 ILCS 5/9-1(b)(14) (West 2006). The definition of the term “disabled person” is set forth in accordance with 720 ILCS 5/9-1(b)(14) (West 2006). The definitions of the word “cold” and the phrase “calculated and premeditated manner pursuant to a preconceived plan, scheme or design” are set forth in accordance with the Illinois Supreme Court discussion in *People v. Williams*, 193 Ill.2d 1, 737 N.E.2d 230 (2000).

The numbers and brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

**28.04 Enhancement/Extended Term Factor(S)—Concluding Instruction**

The State has also alleged that

[1] during the commission of the offense of \_\_\_\_\_ the defendant [(was armed with a firearm) (personally discharged a firearm) (personally discharged a firearm that proximately caused [great bodily harm] [permanent disability] [permanent disfigurement] [death] to another person)].

[or]

[2] when the defendant committed the offense of \_\_\_\_\_ the \_\_\_\_\_ was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

[3] the defendant committed the offense of \_\_\_\_\_ against a person [(under 12 years of age) (60 years of age or older) (physically handicapped)] at the time of the offense (or against such person's property).

[or]

[4] when the defendant committed the offense of [(aggravated criminal sexual assault) (criminal sexual assault)], the offense was committed on the same victim by one or more other individuals and the defendant voluntarily participated in the crime with the knowledge of the participation of the others in the crime and the commission of the crime was part of a single course of conduct during which there was no substantial change in the nature of the criminal objective.

[or]

[5] \_\_\_\_\_ was under 18 years of age at the time of the commission of the aggravated criminal sexual assault.

[or]

[6] when the \_\_\_\_\_ was committed by the defendant the \_\_\_\_\_ involved [(any) (the following type(s)) of] misconduct committed as part of a ceremony, rite, initiation, observance, performance, practice or activity of any actual or ostensible religious, fraternal or social group [(the brutalizing or torturing of humans or animals) (the theft of human corpses) (the kidnapping of humans) (the desecration of any cemetery, religious, fraternal, business, governmental, educational, or other building or property) (ritualized abuse of a child)].

[or]

[7] the defendant committed the offense of \_\_\_\_\_ under an agreement with two or more other persons to commit that offense and the defendant, with respect to the other individuals, occupied a position of organizer, supervisor, financier, or any other position of management or leadership and the commission of the offense of \_\_\_\_\_ was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's leadership in an organized gang.

[or]

[8] when the defendant committed the offense of unlawful use of weapons the

defendant was a member of an organized gang.

[or]

[9] when the defendant committed the offense of \_\_\_\_\_ he used a firearm with a laser sight attached to it.

[or]

[10] when the defendant committed the offense of \_\_\_\_\_ an emergency response officer in the performance of his duties is killed or injured at the scene of the offense while responding to the emergency caused by the commission of the offense.

[or]

[11] when the defendant committed the offense of \_\_\_\_\_ the defendant [(used), (possessed), (exercised control over), (or) (otherwise directed)] an animal to assault a law enforcement officer [(engaged in the execution of his official duties) (or) (in furtherance of the criminal activities of an organized gang in which the defendant is engaged)].

[or]

[12] the defendant committed the offense of [(aggravated battery) (domestic battery) (aggravated domestic battery) (unlawful restraint) (aggravated unlawful restraint)] in the presence of a child.

[or]

[13] when the defendant committed the offense of solicitation of murder the person solicited was a person under the age of 17 years.

[or]

[14] when the defendant committed the offense of first degree murder

a) the defendant had attained the age of 17 or more and the defendant murdered an individual under 12 years of age.

[or]

b) the defendant murdered a [(peace officer) (fireman) (emergency management worker)] when the [(police officer) (fireman) (emergency management worker)] was killed [(in the course of performing his official duties) (to prevent the [(police officer) (fireman) (emergency management worker)] from performing his official duties) (in retaliation for the [(police officer) (fireman) (emergency management worker)] from performing his official duties)] and the defendant knew or should have known that the murdered individual was a [(police officer) (fireman) (emergency management worker)].

[or]

c) the defendant murdered an employee of an institution or facility of the Department of Corrections or any similar local correctional agency, and the employee was killed in the course of performing his official duties or to prevent the employee from performing his official duties or in retaliation for the employee performing his official duties.



[or]

d) the defendant murdered an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistance or first aid person) while employed by a municipality or other governmental unit when the person was killed [(in the course of performing official duties) (to prevent the person from performing official duties) (in retaliation for performing official duties)] and the defendant knew or should have known that the murdered individual was an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistant or first aid personnel)].

[or]

e) the defendant murdered a person under 12 years of age and the murder was committed during the course of [(aggravated criminal sexual assault) (criminal sexual assault) (aggravated kidnapping)].

[or]

f) the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer.

[or]

[15] the defendant at the time of the commission of the offense of first degree murder had attained the age of 18 or more; and

a) the murdered person was killed as a result of the hijacking of [(a) (an)] [(airplane) (train) (ship) (bus) (public conveyance)].

[or]

b) the defendant [(committed the murder pursuant to a contract, agreement, or understanding by which he was to receive money or anything of value in return for committing the murder) (procured another to commit the murder for money or anything of value)].

[or]

c) the murdered person was killed in the course of another felony if

[1] [(the murdered person was actually killed by the defendant);

[or]

(the murdered person received physical injuries personally inflicted by the defendant substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible and the physical injuries inflicted by either the defendant or other person(s) for whose conduct he is legally responsible caused the death of the murdered person);]

and

[2] in performing the acts which caused the death of the murdered individual or



which resulted in physical injuries personally inflicted by the defendant on the murdered individual substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered person (or another);

and

[3] the other felony [(was) (was one or more of the following:)] [(armed robbery) (robbery) (armed violence) (predatory criminal sexual assault of a child) (aggravated criminal sexual assault) (aggravated kidnapping) (aggravated vehicular hijacking) (aggravated arson) (aggravated stalking) (residential burglary) (home invasion) [or] the attempt to commit \_\_\_\_\_)].

[or]

d) the murdered person was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

e) the defendant committed the murder with intent to prevent the murdered person from [(testifying or participating in any criminal investigation or prosecution) (giving material assistance to the State in any investigation or prosecution, either against the defendant or another)].

[or]

f) the defendant committed the murder because the murdered person was a witness in any prosecution or gave material assistance to the State in any investigation or prosecution, either against the defendant or another.

[or]

g) the defendant, while [(committing the offense of \_\_\_\_\_) (engaged in a [(conspiracy) (solicitation)] to commit the offense of \_\_\_\_\_)],

[i] (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

h) the defendant was incarcerated in an institution or facility of the Department of Corrections at the time of the murder, and while [(committing the offense of \_\_\_\_\_) (engaged in a [(conspiracy) (solicitation)] to commit the offense of \_\_\_\_\_)], defendant

[i] (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

i) the murder was committed in a cold, calculated, and premeditated manner pursuant to a preconceived plan, scheme, or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom.

[or]

j) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant [(counseled) (commanded) (induced) (procured) (caused)] the intentional killing of the murdered person.

[or]

k) the murder was intentional and involved the infliction of torture.

[or]

l) the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle.

[or]

m) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

n) the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled.

[or]

o) the murdered person was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act.

[or]

p) the murdered person was known by the defendant to be a [(teacher) (person)] employed in any school and the [(teacher) (employee)] is upon [(the grounds of a school) (the grounds adjacent to a school) (any part of a building used for school purposes)].

[or]

q) the murder was committed by the defendant [(in connection with) (as a result of)] the offense of terrorism.

If you find the defendant is not guilty of the offense of \_\_\_\_\_ you should not consider the State's additional allegation(s) regarding the offense of \_\_\_\_\_.

If you find the defendant is guilty of \_\_\_\_\_, you should then go on with your

deliberation to decide whether the State has proved beyond a reasonable doubt the allegation that insert the appropriate enhancement/extended term factor(s).

[You should give separate consideration to each allegation.]

Accordingly, you will be provided with two verdict forms [(as to each allegation)]: “We, the jury, find the allegation that insert the appropriate enhancement/extended term factor [as to defendant \_\_\_\_\_] was not proven” and “We, the jury, find the allegation that insert the appropriate enhancement/extended term factor [as to defendant \_\_\_\_\_] was proven.”

From these \_\_\_\_\_ verdict forms, you should select the one verdict form (as to each allegation) that reflects your verdict (as to each defendant) and sign it as I have stated. Do not write on the other verdict form(s) (as to each defendant). Sign only one of these verdict forms [(as to each allegation) (as to each defendant)]. Your agreement on your verdict as to the allegation(s) must also be unanimous.

Your verdict must be in writing and signed by all of you, including your foreperson.

#### **Committee Note**

Give this instruction in addition to the applicable 26.01 series instruction and immediately after the applicable 26.01 series instruction.

Give Instruction 28.01.

Give Instruction 28.02.

Give Instruction 28.03.

Insert in the blanks the offense and the applicable enhancement/extended term factor specifically charged in the charging instrument or written notice. If the charging instrument or written notice charges more than one enhancement/extended term factor include each enhancement/extended term factor and add the word “and” between them.

The “ors” are provided for differentiation and should not be included in the instruction submitted to the jury.

When the charging instrument or written notice charges more than one enhancement/extended term factor, give separate verdict forms for each enhancement/extended term factor.

When the charging instrument or written notice charges enhancement/extended term factor[s] against more than one defendant, give separate verdict forms for each defendant and insert the defendant’s name in the verdict forms.

*Enhancement/Extended Term Factor [1]* 730 ILCS 5/5-8-1(a)(1)(d) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[1] for the definition of term “personally discharged a firearm.”

*Enhancement/Extended Term Factor [2]* 730 ILCS 5/5-5-3.2(b)(2) (West 2006); 730 ILCS 5/5-8-1(a)(1)(b) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See



Instruction 28.03 [2] for the definitions of the words “brutal” and “heinous” and for the term “wanton cruelty.”

*Enhancement/Extended Term Factor [3]* 730 ILCS 5/5-5-3.2(b)(4) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material.

*Enhancement/Extended Term Factor [4]* 730 ILCS 5/5-5-3.2(b)(5) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), or criminal sexual assault under 720 ILCS 5/12-13 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor.

*Enhancement/Extended Term Factor [5]* 730 ILCS 5/5-5-3.2(c) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Insert in the blank as indicated the name of the victim. Appropriate modifications should be made when there is more than one victim. Use applicable bracketed material.

*Enhancement/Extended Term Factor [6]* 730 ILCS 5/5-5-3.2(b)(6) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. When more than one alternative is alleged in the charging document, the word “and” should be inserted between them.

*Enhancement/Extended Term Factor [7]* 730 ILCS 5/5-5-3.2(b)(8) (West 2006). This factor does not apply when the defendant is charged with conspiracy. Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03 [7] for the definition of the term “organized gang.”

*Enhancement/Extended Term Factor [8]* 730 ILCS 5/5-5-3.2(b)(9) (West 2006). This factor applies only when the defendant is charged with felony unlawful use of weapons under 720 ILCS 5/24-1 (West 2006). See Instruction 28.03[8] for the definition of the term “organized gang.”

*Enhancement/Extended Term Factor [9]* 730 ILCS 5/5-5-3.2(b)(10) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[9] for the definitions of the terms “laser sight” and “laser pointer.”

*Enhancement/Extended Term Factor [10]* 730 ILCS 5/5-5-3.2(b)(12) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[10] for the definitions of the word “emergency” and the term “emergency response officer.”

*Enhancement/Extended Term Factor [11]* 730 ILCS 5/5-5-3.2(b)(13) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[11] for the definition of the term “organized gang.”

*Enhancement/Extended Term Factor [12]* 720 ILCS 5/12-3.2(c) (West 2006). Use applicable bracketed material. See Instruction 28.03[12] for the definitions of the word “child” and the term “presence of a child.”



*Enhancement/Extended Term Factor [13]* 720 ILCS 5/8-1.1(b) (West 2006). Use when the defendant is charged with solicitation to commit murder under 720 ILCS 5/8-1.1(a) (West 2006), and the charging instrument or written notice alleges that the person solicited was under the age of 17 years.

*Enhancement/Extended Term Factor [14]* 730 ILCS 5/5-8-1(a)(1)(c) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[14] for the definitions of the terms “emergency management worker,” “emergency medical technician-intermediate,” “emergency medical technician-paramedic” and “community policing volunteer.” Although 720 ILCS 5/2-6.5 (West 2006) states that the definition of the term “emergency medical technician-ambulance” is contained in the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50-1 et seq. (West 2006), the Committee could find no statutory definition of the term “emergency medical technician-ambulance.”

*Enhancement/Extended Term Factor [15]* 730 ILCS 5/5-8(b)(1) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[15] for the definitions of the words “brutal,” “heinous,” “torture,” and “cold” and the terms “wanton cruelty” and “disabled person” and the phrase “calculated and premeditated manner pursuant to a preconceived, plan, scheme or design.”

The numbers and brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

28.05 Verdict—Allegation Not Proven

We, the jury, find the allegation that insert the appropriate enhancement/extended term factor [as to defendant \_\_\_\_\_] was not proven.

_____
Foreperson
_____
_____
_____
_____
_____
_____

Committee Note

Insert in the blank the applicable enhancement/extended term factor specifically charged in the charging instrument or written notice.

When the charging instrument or written notice describes more than one enhancement/extended term factor, give separate verdict forms for each applicable enhancement/extended term factor.

When the charging instrument or written notice charges enhancement/extended term factor[s] against more than one defendant, give separate verdict forms for each defendant and insert the defendant’s name in the bracketed blank of the verdict form.

In *People v. Starnes*, 2374 Ill. App. 3d 132, 311 Ill. Dec. 821, 869 N.E.2d 834 (2007), the court discussed, in a case where the defendant was not sentenced to an extended term, whether unanimity is required to find that an extended term factor was not proven. The Committee believes that *Starnes* did not define a legal basis for non-unanimity in proving enhancement factors under *Apprendi*. The death penalty statute explicitly provides for non-unanimous determinations. See 720 ILCS 5/9-1(g). By contrast, unanimity is not addressed in the *Apprendi* statute or Supreme Court Rules. See 725 ILCS 5/111-3(c-5), Ill. Sup. R. 451(g).

The bracket is provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

**28.06 Verdict—Allegation Proven**

We, the jury, find the allegation that [insert the appropriate enhancement/extended term factor] [as to defendant \_\_\_\_\_] was proven.

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Foreperson

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**Committee Note**

Insert in the blank the applicable enhancement/extended term factor specifically charged in the charging instrument or written notice.

When the charging instrument or written notice describes more than one enhancement/extended term factor, give separate verdict forms for each applicable enhancement/extended term factor.

When the charging instrument or written notice charges enhancement/extended term factor[s] against more than one defendant, give separate verdict forms for each defendant and insert the defendant's name in the bracketed blank of the verdict form.

The bracket is provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

## II. BIFURCATED INSTRUCTIONS

### 28A.01 Nature Of The Hearing, Duties Of The Jury And Functions Of The Court

[1] Members of the jury, the evidence and arguments have been completed, and I now will instruct you as to the law.

[2] The defendant in this case has been convicted of the offense(s) of [(\_\_\_\_\_) (and \_\_\_\_\_)]. It is now your duty to determine whether the additional allegation(s) in connection with the offense(s) of [(\_\_\_\_\_) (and \_\_\_\_\_)] [(has) (have)] been proven.

[3] The law that applies to this case is stated in these instructions and it is your duty to follow all of them. You must not single out certain instructions and disregard others. [When I use the word “he” in these instructions, I mean a male or a female.]

[4] It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

[5] [You are not to concern yourself with possible punishment or sentence for the allegation(s) charged during your deliberation. It is the function of the trial judge to determine the sentence should there be a finding that the allegation(s) [(has) (have)] been proven].

[6] Neither sympathy nor prejudice should influence you. [You should not be influenced by any person’s race, color, religion, or national ancestry.]

[7] From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions [and exhibits] which were withdrawn or to which objections were sustained.

[8] Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

[9] You should disregard testimony [and exhibits] which the court has refused or stricken.

[10] The evidence which you should consider consists only of the testimony of the witnesses [and the exhibits] which the court has received [(during the trial of this case) [and] (during this hearing)]. [This means you should consider both the evidence received at trial and the evidence received at this hearing.]

[11] You should consider all the evidence in the light of your own observations and experience in life.

[12] Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as the facts or as to what your verdict should be.

[13] Faithful performance by you of your duties as jurors is vital to the administration of justice.



### Committee Note

Do not use paragraph [5] unless the issue of punishment is raised during trial on the allegation(s).

The Committee has added the bracketed material in paragraph [3] to be used when applicable.

This instruction was drafted, in part, using Instruction 7B.03 as a guide. The Committee believes, as in 7B.03, that the jury should be instructed to consider the evidence presented at trial in every case in which the jury was the trier of fact at the trial. See *e.g.* *People v. Johnson*, 114 Ill. 2d 170, 102 Ill. Dec. 342, 499 N.E. 2d 1355 (1986); *People v. Lewis*, 88 Ill. 2d 129, 58 Ill. Dec. 895, 430 N.E. 2d 1346 (1981), *habeas corpus* granted *sub. nom.* *United States ex. rel. Lewis v. Lane*, 656 F. Supp. 181 (C.D. Ill. 1987), affirmed *sub. nom. Lewis v. Lane*, 832 F.2d 1446 (7th Cir. 1987).

However, when there has been a bench trial, or a plea of guilty, the sentencing jury should not be instructed to consider trial evidence unless it has been formally admitted at the hearing.

Use applicable paragraphs and bracketed material.

The numbers and brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

## 28A.02 General Instructions

### Committee Note

Instruction 1.02 (Jury Is Sole Judge of the Believability of Witnesses) should be given at the enhancement/extended term hearing.

Instruction 1.03 (Arguments of Counsel) should be given at the hearing. The instruction may be modified if either party has waived opening or closing.

The relevant portion(s) of Instruction 28.01 (Enhancement/Extended Term Factor(s)) should be given at the hearing. It should be modified to strike the word “also” in the first sentence of the instruction.

Instruction 28.02 (Enhancement/Extended Term Factor(s) Presumption of Innocence—Reasonable Doubt—Burden of Proof) should be given at the hearing.

The relevant portion(s) of Instruction 28.03 (Issues in Enhancement/Extended Term Factor(s)) should be given at the hearing.

Instruction 28A.01 (Nature of the Hearing, Duties of the Jury and Functions of the Court) should be given at the hearing.

Instruction 28A.03 (Enhancement/Extended Term Factor(s)—Concluding Instruction) should be given at the hearing.

Instruction 28.05 (Verdict—Allegation Not Proven) should be given at the hearing.

Instruction 28.06 (Verdict—Allegation Proven) should be given at the hearing.

It is possible that a case could arise in which no witnesses were called by either party at the enhancement/extended term hearing. However, credibility of trial witnesses could still be at issue.

It is also possible that at the enhancement/extended term hearing the parties may waive opening statements or even closing argument. However, the jury in most cases will have heard opening statements and closing arguments at trial.

**28A.03 Enhancement/Extended Term Factor(S)—Concluding Instruction**

[(When you retire to the jury room your foreperson will preside during your deliberations on your verdict.) (When you retire to the jury room you will first elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.)]

The State has alleged that

[1] during the commission of the offense of \_\_\_\_\_ the defendant [(was armed with a firearm) (personally discharged a firearm) (personally discharged a firearm that proximately caused [great bodily harm] [permanent disability] [permanent disfigurement] [death] to another person)].

[or]

[2] when the defendant committed the offense of \_\_\_\_\_ the \_\_\_\_\_ was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

[3] the defendant committed the offense of \_\_\_\_\_ against a person [(under 12 years of age) (60 years of age or older) (physically handicapped)] at the time of the offense (or against such person's property).

[or]

[4] when the defendant committed the offense of [(aggravated criminal sexual assault) (criminal sexual assault)], the offense was committed on the same victim by one or more other individuals and the defendant voluntarily participated in the crime with the knowledge of the participation of the others in the crime and the commission of the crime was part of a single course of conduct during which there was no substantial change in the nature of the criminal objective.

[or]

[5] \_\_\_\_\_ was under 18 years of age at the time of the commission of the aggravated criminal sexual assault.

[or]

[6] when the \_\_\_\_\_ was committed by the defendant the \_\_\_\_\_ involved [(any) (the following type(s)) of] misconduct committed as part of a ceremony, rite, initiation, observance, performance, practice or activity of any actual or ostensible religious, fraternal or social group [(the brutalizing or torturing of humans or animals) (the theft of human corpses) (the kidnapping of humans) (the desecration of any cemetery, religious, fraternal, business, governmental, educational, or other building or property) (ritualized abuse of a child)].

[or]

[7] the defendant committed the offense of \_\_\_\_\_ under an agreement with two or more other persons to commit that offense and the defendant, with respect to the



other individuals, occupied a position of organizer, supervisor, financier, or any other position of management or leadership and the commission of the offense of \_\_\_\_\_ was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's leadership in an organized gang.

[or]

[8] when the defendant committed the offense of unlawful use of weapons the defendant was a member of an organized gang.

[or]

[9] when the defendant committed the offense of \_\_\_\_\_ he used a firearm with a laser sight attached to it.

[or]

[10] when the defendant committed the offense of \_\_\_\_\_ an emergency response officer in the performance of his duties is killed or injured at the scene of the offense while responding to the emergency caused by the commission of the offense.

[or]

[11] when the defendant committed the offense of \_\_\_\_\_ the defendant [(used), (possessed), (exercised control over), (or) (otherwise directed)] an animal to assault a law enforcement officer [(engaged in the execution of his official duties) (or) (in furtherance of the criminal activities of an organized gang in which the defendant is engaged)].

[or]

[12] the defendant committed the offense of [(aggravated battery) (domestic battery) (aggravated domestic battery) (unlawful restraint) (aggravated unlawful restraint)] in the presence of a child.

[or]

[13] when the defendant committed the offense of solicitation of murder the person solicited was a person under the age of 17 years.

[or]

[14] when the defendant committed the offense of first degree murder

a) the defendant had attained the age of 17 or more and the defendant murdered an individual under 12 years of age.

[or]

c) the defendant murdered a [(peace officer) (fireman) (emergency management worker)] when the [(police officer) (fireman) (emergency management worker)] was killed [(in the course of performing his official duties) (to prevent the [(police officer) (fireman) (emergency management worker)] from performing his official duties) (in retaliation for the [(police officer) (fireman) (emergency management worker)] from performing his official duties)] and the defendant knew or should have known that the



murdered individual was a [(police officer) (fireman) (emergency management worker)].

[or]

c) the defendant murdered an employee of an institution or facility of the Department of Corrections or any similar local correctional agency, and the employee was killed in the course of performing his official duties or to prevent the employee from performing his official duties or in retaliation for the employee performing his official duties.

[or]

d) the defendant murdered an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistance or first aid person) while employed by a municipality or other governmental unit when the person was killed [(in the course of performing official duties) (to prevent the person from performing official duties) (in retaliation for performing official duties)] and the defendant knew or should have known that the murdered individual was an [(emergency medical technician-ambulance) (emergency medical technician-intermediate) (emergency medical technician-paramedic) (ambulance driver or other medical assistant or first aid personnel)].

[or]

e) the defendant murdered a person under 12 years of age and the murder was committed during the course of [(aggravated criminal sexual assault) (criminal sexual assault) (aggravated kidnapping)].

[or]

f) the murder was committed by reason of any person's activity as a community policing volunteer or to prevent any person from engaging in activity as a community policing volunteer.

[or]

[15] the defendant at the time of the commission of the offense of first degree murder had attained the age of 18 or more; and

a) the murdered person was killed as a result of the hijacking of [(a) (an)] [(airplane) (train) (ship) (bus) (public conveyance)].

[or]

b) the defendant [(committed the murder pursuant to a contract, agreement, or understanding by which he was to receive money or anything of value in return for committing the murder) (procured another to commit the murder for money or anything of value)].

[or]

c) the murdered person was killed in the course of another felony if

[1] [(the murdered person was actually killed by the defendant);

[or]

(the murdered person received physical injuries personally inflicted by the defendant

substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible and the physical injuries inflicted by either the defendant or other person(s) for whose conduct he is legally responsible caused the death of the murdered person);]

and

[2] in performing the acts which caused the death of the murdered individual or which resulted in physical injuries personally inflicted by the defendant on the murdered individual substantially contemporaneously with physical injuries caused by [(a person) (one or more persons)] for whose conduct the defendant was legally responsible, the defendant acted with the intent to kill the murdered individual or with the knowledge that his acts created a strong probability of death or great bodily harm to the murdered person (or another);

and

[3] the other felony [(was) (was one or more of the following:)] [(aimed robbery) (robbery) (armed violence) (predatory criminal sexual assault of a child) (aggravated criminal sexual assault) (aggravated kidnapping) (aggravated vehicular hijacking) (aggravated arson) (aggravated stalking) (residential burglary) (home invasion) [or] the attempt to commit \_\_\_\_\_)].

[or]

d) the murdered person was under 12 years of age and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

e) the defendant committed the murder with intent to prevent the murdered person from [(testifying or participating in any criminal investigation or prosecution) (giving material assistance to the State in any investigation or prosecution, either against the defendant or another)].

[or]

f) the defendant committed the murder because the murdered person was a witness in any prosecution or gave material assistance to the State in any investigation or prosecution, either against the defendant or another.

[or]

g) the defendant, while [(committing the offense of \_\_\_\_\_) (engaged in a [(conspiracy) (solicitation)] to commit the offense of \_\_\_\_\_)],

[i] (intentionally killed an individual)

[or]

[ii] [((counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

h) the defendant was incarcerated in an institution or facility of the Department of

Corrections at the time of the murder, and while [(committing the offense of \_\_\_\_\_) (engaged in a [(conspiracy) (solicitation)] to commit the offense of \_\_\_\_\_)], defendant

[i]. (intentionally killed an individual)

[or]

[ii] [(counseled) (commanded) (induced) (procured) (caused) the intentional killing of the murdered individual)].

[or]

i) the murder was committed in a cold, calculated, and premeditated manner pursuant to a preconceived plan, scheme, or design to take a human life by unlawful means, and the conduct of the defendant created a reasonable expectation that the death of a human being would result therefrom.

[or]

j) the defendant was a principal administrator, organizer, or leader of a calculated criminal drug conspiracy consisting of a hierarchical position of authority superior to that of all other members of the conspiracy, and the defendant [(counseled) (commanded) (induced) (procured) (caused)] the intentional killing of the murdered person.

[or]

k) the murder was intentional and involved the infliction of torture.

[or]

l) the murder was committed as a result of the intentional discharge of a firearm by the defendant from a motor vehicle and the victim was not present within the motor vehicle.

[or]

m) the murdered individual was 60 years of age or older and the death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty.

[or]

n) the murdered individual was a disabled person and the defendant knew or should have known that the murdered individual was disabled.

[or]

o) the murdered person was subject to an order of protection and the murder was committed by a person against whom the same order of protection was issued under the Illinois Domestic Violence Act.

[or]

p) the murdered person was known by the defendant to be a [(teacher) (person)] employed in any school and the [(teacher) (employee)] is upon [(the grounds of a school) (the grounds adjacent to a school) (any part of a building used for school purposes)].



[or]

q) the murder was committed by the defendant [(in connection with) (as a result of)] the offense of terrorism.

[(You have found the defendant is guilty of \_\_\_\_\_.) (The defendant has been found guilty of \_\_\_\_\_.)] You now will go on with your deliberations to decide whether the State has proved beyond a reasonable doubt the allegation that insert the appropriate enhancement/extended term factor(s).

[You should give separate consideration to each allegation.]

Accordingly, you will be provided with two verdict forms [(as to each allegation)]: “We, the jury, find the allegation that insert the appropriate enhancement/extended term factor [as to defendant \_\_\_\_\_] was not proven.” and “We, the jury, find the allegation that insert the appropriate enhancement/extended term factor [as to defendant \_\_\_\_\_] was proven.”

From these \_\_\_\_\_ verdict forms, you should select the one verdict form (as to each allegation) that reflects your verdict (as to each defendant) and sign it as I have stated. Do not write on the other verdict form(s) (as to each defendant). Sign only one of these verdict forms [(as to each allegation) (as to each defendant)].

Your agreement on your verdict as to the allegation(s) must also be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

### Committee Note

Give the relevant portion(s) of Instruction 28.01 (Enhancement/Extended Term Factor(s)). It should be modified to strike the word “also” in the first sentence of the instruction

Give Instruction 28.02.

Give the relevant portion(s) of Instruction 28.03 (Issues in Enhancement/Extended Term Factor(s)).

Give Instruction 28.05 (Verdict—Allegation Not Proven).

Give Instruction 28.06 (Verdict—Allegation Proven).

The alternate language on electing a foreperson should be given if the jury has not already elected a foreperson at trial.

Insert in the blanks the offense and the applicable Enhancement/Extended Term Factor specifically charged in the charging instrument or written notice. If the charging instrument or written notice charges more than one Enhancement/Extended Term Factor include each enhancement/extended term factor and add the word “and” between them.

The “ors” are provided for differentiation and should not be included in the instruction submitted to the jury.

When the charging instrument or written notice charges more than one Enhancement/Extended Term Factor, give separate verdict forms for each Enhancement/Extended Term Factor.



When the charging instrument or written notice charges enhancement/extended term factor[s] against more than one defendant, give separate verdict forms for each defendant and insert the defendant's name in the verdict forms.

*Enhancement/Extended Term Factor [1]* 730 ILCS 5/5-8-1(a)(1)(d) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[1] for the definition of term “personally discharged a firearm.”

*Enhancement/Extended Term Factor [2]* 730 ILCS 5/5-5-3.2(b)(2) (West 2006); 730 ILCS 5/5-8-1(a)(1)(b) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03 [2] for the definitions of the words “brutal” and “heinous” and for the term “wanton cruelty.”

*Enhancement/Extended Term Factor [3]* 730 ILCS 5/5-5-3.2(b)(4) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material.

*Enhancement/Extended Term Factor [4]* 730 ILCS 5/5-5-3.2(b)(5) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), or criminal sexual assault under 720 ILCS 5/12-13 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor.

*Enhancement/Extended Term Factor [5]* 730 ILCS 5/5-5-3.2(c) (West 2006). Use when the defendant is charged with aggravated criminal sexual assault under 720 ILCS 5/12-14 (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Insert in the blank as indicated the name of the victim. Appropriate modifications should be made when there is more than one victim. Use applicable bracketed material.

*Enhancement/Extended Term Factor [6]* 730 ILCS 5/5-5-3.2(b)(6) (West 2006). Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. When more than one alternative is alleged in the charging document, the word “and” should be inserted between them.

*Enhancement/Extended Term Factor [7]* 730 ILCS 5/5-5-3.2(b)(8) (West 2006). This factor does not apply when the defendant is charged with conspiracy. Insert in both blanks as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[7] for the definition of the term “organized gang.”

*Enhancement/Extended Term Factor [8]* 730 ILCS 5/5-5-3.2(b)(9) (West 2006). This factor applies only when the defendant is charged with felony unlawful use of weapons under 720 ILCS 5/24-1 (West 2006). See Instruction 28.03[8] for the definition of the term “organized gang.”

*Enhancement/Extended Term Factor [9]* 730 ILCS 5/5-5-3.2(b)(10) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[9] for the definitions of the terms “laser sight” and “laser pointer.”

*Enhancement/Extended Term Factor [10]* 730 ILCS 5/5-5-3.2(b)(12) (West

2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. See Instruction 28.03[10] for the definitions of the word “emergency” and the term “emergency response officer.”

*Enhancement/Extended Term Factor [11]* 730 ILCS 5/5-5-3.2(b)(13) (West 2006). Insert in the blank as indicated the offense specifically charged in the charging instrument or written notice. Use applicable bracketed material. See Instruction 28.03[11] for the definition of the term “organized gang.”

*Enhancement/Extended Term Factor [12]* 720 ILCS 5/12-3.2(c) (West 2006). Use applicable bracketed material. See Instruction 28.03[12] for the definitions of the word “child” and the term “presence of a child.”

*Enhancement/Extended Term Factor [13]* 720 ILCS 5/8-1.1(b) (West 2006). Use when the defendant is charged with solicitation to commit murder under 720 ILCS 5/8-1.1(a) (West 2006), and the charging instrument or written notice alleges that the person solicited was under the age of 17 years.

*Enhancement/Extended Term Factor [14]* 730 ILCS 5/5-8-1(a)(1)(c) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[14] for the definitions of the terms “emergency management worker,” “emergency medical technician-intermediate,” “emergency medical technician-paramedic” and “community policing volunteer.” Although 720 ILCS 5/2-6.5 (West 2006) states that the definition of the term “emergency medical technician-ambulance” is contained in the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50-1 et seq. (West 2006), the Committee could find no statutory definition of the term “emergency medical technician-ambulance.”

*Enhancement/Extended Term Factor [15]* 730 ILCS 5/5-8(b)(1) (West 2006). Use when the defendant is charged with first degree murder under 720 ILCS 5/9-1(a) (West 2006), and the charging instrument or written notice alleges the enhancement/extended term factor. Use applicable bracketed material. See Instruction 28.03[15] for the definitions of the words “brutal,” “heinous,” “torture,” and “cold” and the terms “wanton cruelty” and “disabled person” and the phrase “calculated and premeditated manner pursuant to a preconceived, plan, scheme or design.”

The numbers and brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.





# INDEX

[References are to sections.]

## A

### ABORTION

#### Definitions

Adult family member . . . 10.01C

Incompetent . . . 10.01B

Minor . . . 10.01A

Unauthorized waiver of notice . . . 10.01

Homicide charges, abortion under Illinois law excluded from . . . 7.26

#### Unauthorized waiver of notice

Definition . . . 10.01

Issues in . . . 10.02

### ACCOUNTABILITY

Generally . . . 5.03

Felony murder . . . 5.03A

### ARMED VIOLENCE

#### Aggravated armed violence

Definition (July-December, 1994) . . . 11.51X

Issues (July-December, 1994) . . . 11.52X

Definitions . . . 11.51

Issues in . . . 11.52-11.52Y

### ARSON

#### Aggravated

Definition . . . 15.03

Issues in . . . 15.04

#### Defense

Definition . . . 24-25.27

Issues in . . . 24-25.27A

Definition . . . 15.01

Explosives or incendiary device, possession of (See EXPLOSIVES OR INCENDIARY DEVICE, POSSESSION OF)

Insurance fraud . . . 15.02B

Personal property with value of \$150 or more . . . 15.02A

#### Place of worship

Definition . . . 15.09

Issues in . . . 15.10

Real property, issues in . . . 15.02

#### Residential

Definition . . . 15.07

Issues in . . . 15.08

### ASSAULT, BATTERY AND RELATED CRIMES

#### Aggravated assault

Definition . . . 11.03

Issues . . . 11.04

Armed violence (See ARMED VIOLENCE)

Assault issues . . . 11.02

Battery generally (See BATTERY)

#### Body parts, sale of

Definition . . . 11.73

Issues in . . . 11.74

#### Cemetery vandalism

Definition . . . 11.83

Issues in . . . 11.84

### ASSAULT, BATTERY AND RELATED CRIMES—

#### Cont.

Compelling confession, statement, or information by force or threat

Definition . . . 11.45

Issues in compulsion . . . 11.46

Compelling person under 18 to join organization or association

Definition . . . 11.85

Issues in compulsion . . . 11.86

Criminal sexual abuse (See SEXUAL ABUSE, CRIMINAL)

Criminal sexual assault (See SEXUAL ASSAULT, CRIMINAL)

#### Cruelty to children

Definition . . . 11.27

Issues . . . 11.28

Drug-induced infliction of great bodily harm

Definition . . . 11.35

Issues in . . . 11.36

Elderly or disabled person, criminal neglect of (See ELDERLY OR DISABLED PERSON, CRIMINAL NEGLIGENCE OF)

Endangering life or health of child

Definition . . . 11.29

Issues in . . . 11.30

#### Hate crime

Definition . . . 11.47

Issues in . . . 11.48

#### Hazing

Definition . . . 11.101

Issues in . . . 11.102

Home invasion (See HOME INVASION)

Housing management, criminal

Definition . . . 11.39

Issues in . . . 11.40

Intimidation (See INTIMIDATION)

Long term care facility resident, abuse of (See LONG TERM CARE FACILITY RESIDENT)

Order of protection, violation of (See ORDER OF PROTECTION, VIOLATION OF)

Organization membership of persons, compelling

Definition . . . 11.43

Issues in . . . 11.44

Parent or legal guardian of a minor, false representation to a tattoo or body piercing business as

Definition . . . 11.121

Issues . . . 11.122

#### Reckless conduct

Definition . . . 11.37

Issues in . . . 11.38

Ritualized abuse of child

Definition . . . 11.95

Issues in . . . 11.96

#### Ritual mutilation

Definition . . . 11.81

Issues . . . 11.82

Sexual abuse, criminal (See SEXUAL ABUSE, CRIMINAL)



[References are to sections.]

**ASSAULT, BATTERY AND RELATED CRIMES—**

Cont.

Sexual assault, criminal (See **SEXUAL ASSAULT, CRIMINAL**)Stalking (See **STALKING**)

Strangle defined . . . 11.107A

Tampering with food, drugs, or cosmetics

Definition . . . 11.31

Issues in . . . 11.32

Tattoo or body piercing business, false representation as parent or legal guardian of a minor

Definition . . . 11.121

Issues . . . 11.122

Threatening public officials and human service providers

Definition . . . 11.49

Human service provider and immediate family, definition of . . . 11.49B

Issues in . . . 11.50

Public official and immediate family, definition of . . . 11.49A

Vehicular endangerment (See **VEHICULAR ENDANGERMENT**)Vehicular invasion (See **VEHICULAR INVASION**)**ATTEMPT**

First degree murder attempt

Definition, generally . . . 6.05X

Enhancing factors . . . 6.05XX; 6.07XX

Issues in . . . 6.07X

Impossibility of committing offense . . . 6.06

Other than attempt first degree murder

Definition . . . 6.05

Issues in . . . 6.07

**B****BATTERY**

Aggravated battery

Administering dangerous substance

Definition . . . 11.17

Issues in . . . 11.18

Child or institutionalized mentally retarded person

Definition . . . 11.25

Issues . . . 11.26

Child or person with intellectual disability

Definition of aggravated battery . . . 11.109

Issues . . . 11.110

Definition

Certain conduct, based on . . . 11.119

Child or person with intellectual disability, based on injury to . . . 11.109

Firearm . . . 11.23; 11.115

Injury, based on . . . 11.107

Location of conduct, based on . . . 11.111

Status of victim, based on . . . 11.113

Weapon or device, based on use of . . . 11.117

Firearm, with

Definition . . . 11.23; 11.115

Definition of firearm . . . 11.23A

Issues in . . . 11.24; 11.116

Machine gun defined . . . 4.34

**BATTERY—Cont.**

Aggravated battery—Cont.

Food containing foreign substance or object

Definition . . . 11.19

Issues in . . . 11.20

Great bodily harm

Definition . . . 11.13

Issues . . . 11.14

Heinous battery

Definition . . . 11.21

Issues . . . 11.22

Issues

Certain conduct, based on . . . 11.120

Child or person with intellectual disability, based on injury to . . . 11.110

Firearm, based on use of . . . 11.24; 11.116

Injury, based on . . . 11.108

Location of conduct, based on . . . 11.112

Status of victim, based on . . . 11.114

Weapon or device, based on use of . . . 11.118

Senior citizens

Definition . . . 11.33

Issues . . . 11.34

Unborn child

Definition . . . 11.09

Issues . . . 11.10

Weapon or device, use of

Definition . . . 11.117

Issues . . . 11.118

While armed, hooded, or involving specific categories of victims

Definition . . . 11.15

Issues . . . 11.16

Cruelty to children

Definition . . . 11.27

Issues . . . 11.28

Definition . . . 11.05

Domestic battery

Definition . . . 11.11

Family or household member, definition of . . . 11.11A

Issues in domestic battery . . . 11.12

Drug-induced infliction of great bodily harm

Definition . . . 11.35

Issues in . . . 11.36

Endangering life or health of child

Definition . . . 11.29

Issues in endangerment . . . 11.30

Heinous battery

Definition . . . 11.21

Issues in battery . . . 11.22

Issues . . . 11.06

Tampering with food, drugs, or cosmetics

Definition . . . 11.31

Issues . . . 11.32

Unborn child, battery of

Aggravated battery of an unborn child

Definition . . . 11.09

Issues in battery . . . 11.10

Defined . . . 11.07

Issues . . . 11.08; 11.10

Unborn child defined . . . 11.07A

[References are to sections.]

**BIGAMY**

- Affirmative defenses . . . 9.05B
- Cohabit defined . . . 9.05A
- Definition . . . 9.05
- Issues in . . . 9.06
- Marrying a bigamist
  - Affirmative defenses to . . . 9.07A
  - Defined . . . 9.07
  - Issues in . . . 9.08

**BILL OF PARTICULARS**

- Evidence, as . . . 2.06

**BODY PARTS, SALE OF**

- Definition . . . 11.73
- Issues in . . . 11.74

**BRIBERY**

- Athletic contest
  - Accepting bribe
    - Definition . . . 21.03
    - Issues in . . . 21.04
  - Failure to report offer
    - Definition . . . 21.05
    - Issues in . . . 21.06
  - Offering bribe
    - Definition . . . 21.01
    - Issues . . . 21.02
- Attendance at particular institution
  - Definition . . . 21.17
  - Issues in . . . 21.18
- Commercial bribe
  - Accepting bribe
    - Definition . . . 21.09
    - Issues in . . . 21.10
  - Offering bribe
    - Definition . . . 21.07
    - Issues in . . . 21.08
- Official bribe
  - Definition . . . 21.11
  - Failure to report
    - Definition . . . 21.13
    - Issues in . . . 21.14
  - Issues in
    - Generally . . . 21.12
    - Agreement by intermediary . . . 21.12C
    - Belief in official status . . . 21.12A
    - Solicitation by intermediary . . . 21.12D
    - Through an intermediary . . . 21.12B
- Misconduct, official
  - Definition . . . 21.15
  - Enforcement agency . . . 21.16A
  - Issues in . . . 21.16
- Sports agents
  - Definition . . . 21.19
  - Issues in . . . 21.20

**BURDEN OF PROOF**

- Generally . . . 2.03
- Bill of particulars . . . 2.06
- Charging instructions (See **CHARGING INSTRUCTIONS**)
- Complaint not evidence . . . 2.02
- Defendant, failure of to testify . . . 2.04

**BURDEN OF PROOF—Cont.**

- Indictment not evidence . . . 2.02
- Insanity defense . . . 2.03B
- Murder, first and second degree . . . 2.03A
- Presumption of innocence
  - Generally . . . 2.03
  - Insanity defense . . . 2.03B
  - Murder, first and second degree . . . 2.03A
- Reasonable doubt
  - Generally . . . 2.03
  - Defined . . . 2.05
  - Insanity defense . . . 2.03B
  - Murder, first and second degree . . . 2.03A
- Venue instructions . . . 2.07-2.07X

**BURGLARY**

- Authorized entry but unauthorized remaining within
  - Definition . . . 14.09
  - Issues in . . . 14.10
- Criminal fortification of a residence or building (See **CRIMINAL FORTIFICATION OF A RESIDENCE OR BUILDING**)
- Criminal trespass to a residence
  - Definition . . . 14.17
  - Issues in . . . 14.18
  - Residence defined . . . 14.17A
- Limited authority doctrine and unauthorized entry . . . 14.07A
- Possession of burglary tools
  - Definition . . . 14.11
  - Issues in . . . 14.12
- Residential burglary
  - Authorized entry but unauthorized remaining within
    - Definition . . . 14.13A
    - Issues in . . . 14.14A
  - Definition . . . 14.13
  - False representation to gain entry
    - Definition . . . 14.13B
    - Issues . . . 14.14B
  - Home invasion . . . 11.53A
  - Issues in . . . 14.14
- Robbery (See **ROBBERY**)
- Unauthorized entry
  - Definition . . . 14.07
  - Issues in . . . 14.08
  - Limited authority doctrine . . . 14.07A

**C****CANNABIS**

- Conspiracy, calculated criminal cannabis
  - Agreement implied from conduct . . . 17.13A
  - Definition . . . 17.13
  - Issues in . . . 17.14
- Organized gang defined . . . 17.67A
- Streetgang
  - Definition . . . 17.67
  - Issues in . . . 17.68
- Criminally derived property defined . . . 17.43D
- Dangerous place, use of for the commission of a controlled substance or cannabis offense
  - Definition . . . 17.41A
  - Issues in . . . 17.42A

[References are to sections.]

**CANNABIS—Cont.**

- Delivery of, enhancing factors based upon age
  - Definition . . . 17.09
  - Issues in . . . 17.10
- Financial institution defined . . . 17.43B
- Financial transaction defined . . . 17.43A
- Manufacture or delivery of
  - Definition . . . 17.05
  - "Deliver" defined . . . 17.05A
  - Issues in . . . 17.06
  - Location on school grounds, enhancing factor based on
    - Definition . . . 17.63
    - Issues in . . . 17.64
- Monetary instrument defined . . . 17.43C
- Money laundering
  - Definition . . . 17.43
  - Issues in . . . 17.44
- Paraphernalia, possession of drug
  - Definition . . . 17.65
  - Issues in . . . 17.66
  - Legitimacy, inference of . . . 17.65A
- Paraphernalia, sale of drug
  - Definition . . . 17.57
  - Issues in . . . 17.58
  - Legitimacy, inference of . . . 17.65A
  - "Paraphernalia," definition of . . . 17.57A
  - Person under 18 years of age, to
    - Definition . . . 17.59
    - Issues in . . . 17.60
  - Possession (See subhead: Paraphernalia, possession of drug)
  - Pregnant woman, to
    - Definition . . . 17.61
    - Issues in . . . 17.62
- Place
  - Definition . . . 17.43E
  - Intended use of, inferences on . . . 17.43F
- Possession of
  - Definition . . . 17.01
  - Issues in . . . 17.02
  - Subsequent offense of possession of (See subhead: Subsequent offense of possession of)
- Production or possession of cannabis sativa plant
  - Definition . . . 17.11
  - Issues in . . . 17.12
- Subsequent offense of calculated criminal cannabis conspiracy
  - Definition . . . 17.15
  - Issues in . . . 17.16
- Subsequent offense of possession of
  - Definition . . . 17.03
  - Issues in . . . 17.04
- Trafficking in
  - Definition . . . 17.07
  - Issues in . . . 17.08

**CEMETERY VANDALISM**

- Definition . . . 11.83
- Issues in . . . 11.84

**CHARGING INSTRUCTIONS**

- General . . . 2.01

**CHARGING INSTRUCTIONS—Cont.**

- Lesser included offenses (See LESSER INCLUDED OFFENSES)
- Murder, first and second degree
  - Involuntary manslaughter, with . . . 2.01I-P
  - No involuntary manslaughter . . . 2.01A-H

**CHILD OR CHILDREN**

- Aggravated battery
  - Child or institutionalized mentally retarded person . . . 11.25; 11.26
  - Child or person with intellectual disability
    - Definition of aggravated battery . . . 11.109
    - Issues . . . 11.110
- Cruelty to children
  - Definition . . . 11.27
  - Issues . . . 11.28
- Endangering life or health of child
  - Definition . . . 11.29; 11.29B
  - Issues . . . 11.30; 11.30B
  - Unattended in motor vehicle . . . 11.29A
- Permitting sexual abuse of a child
  - Definition . . . 11.99
  - Issues . . . 11.100
- Predatory criminal sexual assault of a child (See PREDATORY CRIMINAL SEXUAL ASSAULT OF A CHILD)
- Ritualized abuse of child
  - Definition . . . 11.95
  - Issues . . . 11.96

**CHILD PORNOGRAPHY**

- Affirmative defenses . . . 9.29A
- Definition . . . 9.29
- Disseminate, produce and reproduce under offense of . . . 9.29B
- Issues in . . . 9.30
- Presumption of possession with intent to disseminate . . . 9.29C

**COMPLAINT**

- Evidential status of . . . 2.02

**COMPULSION AS DEFENSE**

- Definition . . . 24-25.21
- Issue in . . . 24-25.21A

**COMPUTER FRAUD**

- Access, issues in . . . 13.54
- Access defined . . . 13.55C
- Computer, definition of . . . 13.55
- Damage, issues in . . . 13.54A
- Data defined . . . 13.55B
- Definition . . . 13.53
- Money, access for . . . 13.54B
- Program, definition of . . . 13.55A
- Services defined . . . 13.55D
- Vital services or operations defined . . . 13.55E

**COMPUTER TAMPERING**

- Access defined . . . 13.55C
- Accessing . . . 13.50
- Aggravated
  - Definition . . . 13.51
  - Issues in . . . 13.52



[References are to sections.]

**COMPUTER TAMPERING—Cont.**

- Computer, definition of . . . 13.55
- Damage . . . 13.50B
- Data defined . . . 13.55B
- Definition . . . 13.49
- Inserting a program . . . 13.50C
- Obtaining data or services . . . 13.50A
- Program, definition of . . . 13.55A
- Services defined . . . 13.55D
- Vital services or operations defined . . . 13.55E

**CONCLUDING INSTRUCTIONS****General**

- First and second degree murder, jury instructed on . . . 26.01A-C
- Guilty but mentally ill verdict, instruction on . . . 26.01C
- Guilty but mentally ill verdict, no instruction on . . . 26.01-26.01B
- Insanity defense, no instruction on . . . 26.01; 26.01A; 26.01B; 26.01C
- No lesser included offense . . . 26.01
- Second degree murder, no instruction on . . . 26.01
- Lesser included offenses**
  - Guilty but mentally ill verdict, instruction on . . . 26.01S; 26.01T; 26.01W
  - Guilty but mentally ill verdict, no instruction on . . . 26.01R; 26.01U; 26.01V
  - Insanity defense, instruction on . . . 26.01U-X
  - Insanity defense, no instruction on . . . 26.01R-T
  - No other charges . . . 26.01S; 26.01U; 26.01W
  - Other charge or charges, instruction on . . . 26.01R; 26.01T; 26.01V; 26.01X
- Murder in first and second degree, no involuntary manslaughter**
  - Guilty but mentally ill verdict, instruction on . . . 26.01D; 26.01G; 26.01H
  - Insanity defense, instruction on . . . 26.01E-H
  - Insanity defense, no instruction on . . . 26.01D
  - No other charges . . . 26.01E; 26.01G
  - Some other charge or charges, instruction on . . . 26.01D; 26.01F; 26.01H
- Murder in first and second degree with involuntary manslaughter**
  - Greater and lesser included offenses, no other instructions but on . . . 26.01Q
  - Guilty but mentally ill verdict, instruction on . . . 26.01K; 26.01L; 26.01O; 26.01P
  - Guilty but mentally ill verdict, no instruction on . . . 26.01M; 26.01N; 26.01Q
  - Insanity defense, instruction on . . . 26.01M-P
  - Insanity defense, no instruction on . . . 26.01K; 26.01L; 26.01Q
  - No other charges . . . 26.01I; 26.01K; 26.01M; 26.01O
  - Some other charge or charges, instruction on . . . 26.01J; 26.01L; 26.01N; 26.01P
- No lesser included offenses**
  - Guilty but mentally ill verdict, instruction on . . . 26.01AA; 26.01Z
  - Guilty but mentally ill verdict, no instruction on . . . 26.01Y

**CONCLUDING INSTRUCTIONS—Cont.**

- No lesser included offenses—Cont.
  - Insanity defense, instruction on . . . 26.01AA; 26.01Y
- Sample instructions . . . Ch. 27

**CONSPIRACY**

- Other than certain drug conspiracies
  - Definition of . . . 6.03
  - Issues in . . . 6.04

**CONTRABAND**

- Alcoholic liquor defined . . . 22.69D
- Attempt defined . . . 22.69M
- Bringing into penal institutions, unauthorized
  - Definition . . . 22.55
  - Employee, by
    - Definition . . . 22.63
    - Issues in . . . 22.64
  - Issues in . . . 22.56
- Cannabis defined . . . 22.69E
- Conspiracy defined . . . 22.69N
- Controlled substance defined . . . 22.69F
- Cutting tool defined . . . 22.69L
- Defined . . . 22.69C
- Deliver or delivery defined . . . 22.69B
- Delivery of by employee, unauthorized
  - Definition . . . 22.67
  - Issues in . . . 22.68
- Employee of a penal institution defined . . . 22.69a
- Explosive defined . . . 22.69J
- Firearm ammunition defined . . . 22.69I
- Firearm defined . . . 22.69H
- Penal institutions defined . . . 22.69
- Possessing in penal institutions, unauthorized
  - Arrest, possession at as affirmative defense
    - Definition . . . 22.61
    - Issues in . . . 22.62
  - Authorized possession as affirmative defense
    - Definition . . . 22.59
    - Issues in . . . 22.60
  - Definition . . . 22.57
- Employee, by
  - Definition . . . 22.65
  - Issues in . . . 22.66
- Issues in . . . 22.58
- Solicitation defined . . . 22.69P
- Tool to defeat security mechanisms defined . . . 22.69K
- Weapon defined . . . 22.69G

**CONTROLLED SUBSTANCES**

- Building, permitting unlawful use of
  - Dangerous place, use of for the commission of a controlled substance or cannabis offense
    - Definition . . . 17.41A
    - Issues in . . . 17.42A
  - Definition . . . 17.41
  - Issues in . . . 17.42
- Conspiracy, criminal drug
  - Calculated
    - Definition . . . 17.29
    - Issues in . . . 17.30
  - Definition . . . 17.31



[References are to sections.]

**CONTROLLED SUBSTANCES—Cont.**

Conspiracy, criminal drug—Cont.

Issues in . . . 17.32

Organized gang defined . . . 17.67A

Streetgang

Definition . . . 17.67

Issues in . . . 17.68

Counterfeit substance defined . . . 17.33A

Criminally derived property defined . . . 17.43D

Dangerous place, use of for the commission of a controlled substance or cannabis offense

Definition . . . 17.41A

Issues in . . . 17.42A

Delivery of controlled, counterfeit or look-alike substance

Age, enhancing factors based upon

Definition . . . 17.21

Issues in . . . 17.22

Youths, use of in commission of offense

Definition . . . 17.23

Issues in . . . 17.24

Delivery of controlled substance

Pregnant woman recipient, enhancing factors based upon

Definition . . . 17.25

Issues in . . . 17.26

Financial institution defined . . . 17.43B

Financial transaction defined . . . 17.43A

Hypodermic syringe or needle

Delivery, sale or exchange of

Definition . . . 17.39

Issues in . . . 17.40

Possession of

Definition . . . 17.37

Issues in . . . 17.38

Look-alike substance

Counterfeit substance defined . . . 17.33A

Definition . . . 17.33B

Manufacture, distribution, advertisement of or possession with intent to manufacture or distribute

Definition . . . 17.33

Issues in . . . 17.34

Location, enhancing factors based upon

. . . 17.35-36

Manufacture of, delivery of, or possession with intent to manufacture or deliver controlled or counterfeit substance

Location, enhancing factors based upon

Definition . . . 17.19

Issues in . . . 17.20

Manufacture or delivery of controlled or counterfeit substance

Definition . . . 17.17

Issues in . . . 17.18

Monetary instrument defined . . . 17.43C

Money laundering

Definition . . . 17.43

Issues in . . . 17.44

Paraphernalia, possession of drug

Definition . . . 17.65

Issues in . . . 17.66

Legitimacy, inference of . . . 17.65A

**CONTROLLED SUBSTANCES—Cont.**

Paraphernalia, sale of drug

Definition . . . 17.57

Issues in . . . 17.58

Legitimacy, inference of . . . 17.65A

"Paraphernalia," definition of . . . 17.57A

Person under 18 years of age, to

Definition . . . 17.59

Issues in . . . 17.60

Possession (See subhead: Paraphernalia, possession of drug)

Pregnant woman, to

Definition . . . 17.61

Issues in . . . 17.62

Place; inferences on intended use of . . . 17.43F

Possession of controlled or counterfeit substance

Definition . . . 17.27

Issues in . . . 17.28

Telecommunications device, unlawful transfer of to a minor

Definition . . . 17.49

Issues in . . . 17.50

"Telecommunications device" defined . . . 17.49A

Trafficking use of cellular radio device

Definition . . . 17.47

Issues in . . . 17.48

Trafficking

Cellular radio telecommunications device, use of in

Definition . . . 17.47

Issues in . . . 17.48

Definition . . . 17.45

Issues in . . . 17.46

**COURT**

Functions of . . . 1.01

**CRIMINAL DAMAGE (See DAMAGE, CRIMINAL)**

**CRIMINAL FORTIFICATION OF A RESIDENCE OR BUILDING**

Definition . . . 14.15

Fortified condition defined . . . 14.15A

Issues in . . . 14.16

**CRIMINAL TRESPASS (See TRESPASS, CRIMINAL)**

**CUSTODIAL SEXUAL MISCONDUCT**

Conditional release defined . . . 9.49

Employee

Definition of crime . . . 9.44

Issues in . . . 9.47

Knowledge of custodial status, issue in defense of . . . 9.52B

Penal system defined . . . 9.45

Previous marriage, issue in defense of . . . 9.52A

Probation officer, supervising officer, surveillance agent

Affirmative defenses . . . 9.51

Definition of crime . . . 9.48

Issues in . . . 9.50

Treatment and detention facility defined . . . 9.46

[References are to sections.]

**D****DAMAGE, CRIMINAL**

## Defacement of property, criminal

Definition . . . 16.01X

Issues in . . . 16.02X

## Defenses

Definition . . . 24-25.27

Issues in . . . 24-25.27A

## Fire fighting apparatus, hydrants or equipment at train

Definition . . . 16.05

Issues in . . . 16.06

## Interference with public institution of higher education

Definition . . . 16.19

Issues in . . . 16.20

## Property, to

Defacement of property, criminal (See subhead: Defacement of property, criminal)

Definition . . . 16.01

Interest in property no defense . . . 16.01A

Issues in . . . 16.02

## Shooting firearm at train

Definition . . . 16.03

Issues in . . . 16.04

## State or government supported property

Definition of . . . 16.13

Issues in . . . 16.14

## Trespass, criminal (See TRESPASS, CRIMINAL)

## Vandalism, institutional

Definition of . . . 16.07

Issues in . . . 16.08

## Weapons, unauthorized possession or storage of

Definition . . . 16.17

Issues in . . . 16.18

**DATE OF OFFENSE CHARGED**

Generally . . . 3.01

**DEADLOCKED JURY**

Supplemental instructions . . . 26.07

**DEFENDANT**

Corporate . . . 1.04

**DEFENSES**

Generally . . . 24-25.00

Alibi . . . 24-25.05

## Arson

Definition . . . 24-25.27

Issues in . . . 24-25.27A

## Compulsion

Definition . . . 24-25.21

Issue in . . . 24-25.21A

## Criminal damage to property

Definition . . . 24-25.27

Issues in . . . 24-25.27A

## Entrapment

Definition . . . 24-25.04

Issues in . . . 24-25.04A

## Force, use of (See FORCE, USE OF AS DEFENSE)

## Home invasion

Definition . . . 24-25.25

Issue in . . . 24-25.25A

## Insanity (See INSANITY, DEFENSE OF)

**DEFENSES—Cont.**

Intoxication or drugged condition, definition of involuntary . . . 24-25.03

## Mistake of fact, defense of

Definition . . . 24-25.24

Issues in . . . 24-25.24A

## Necessity

Definition . . . 24-25.22

Issues in . . . 24-25.22A

## Statute of limitations exceptions

Issues in . . . 24-25.23A; 24-25.23Y

Prosecutions brought under exceptions to normally applicable . . . 24-25.23; 24-25.23X

**DEFINITIONS**

## Abortion (See ABORTION, subhead: Definitions)

Act . . . 4.01

## Aggravated battery (See BATTERY, subhead: Aggravated battery)

Aggravated kidnapping . . . 8.04

Aggravated unlawful restraint . . . 8.06A

Air rifle . . . 4.35

Armed with firearm . . . 4.36

## Attempt

First degree murder attempt . . . 6.05X

Other than first degree murder . . . 6.05

## Battery

Generally . . . 11.05

Aggravated battery (See BATTERY, subhead: Aggravated battery)

Bigamy . . . 9.05

Child abduction . . . 8.11

Clear and convincing evidence . . . 4.19

Cohabit . . . 9.05A

Company . . . 8.31B

Conceal . . . 7.14

Concealment of homicidal death . . . 7.11

Conduct . . . 4.02

## Conspiracy (See CONSPIRACY)

Conspiracy, other than certain drug conspiracies . . . 6.03

Correctional institution employee . . . 4.26

Criminal street gang . . . 4.20-22

Dangerous weapon . . . 4.17

Digital signature . . . 5.12

Domestic violence shelter . . . 4.28

Dwelling place . . . 4.03

Electronic signature . . . 5.13

Emergency medical technician . . . 4.30

Failure to report the death or disappearance of a child under 13 years of age . . . 8.33

False document . . . 13.42A

Felony . . . 4.04

Forcible detention . . . 8.09

Forcible felony . . . 4.05

## Forgery

Generally . . . 13.39; 13.39A

Document, definition of . . . 13.42

Gang . . . 4.20-22

Gang-related . . . 4.22

Hate crime . . . 11.47

High managerial agent . . . 5.10

Homicidal means . . . 7.13

[References are to sections.]

**DEFINITIONS—Cont.**

Indecent solicitation of a child . . . 9.01  
 Intimidation . . . 11.41  
 Intoxicating compound . . . 4.25  
 Involuntary manslaughter . . . 7.07  
 Involuntary servitude . . . 8.27  
 Involuntary sexual servitude of a minor . . . 8.29  
 Kidnapping . . . 8.01  
 Luring a minor . . . 8.25  
 Machine gun . . . 4.34; 18.35D  
 Misdemeanor . . . 4.06  
 Mitigating factor . . . 7.03  
 Murder, first and second degree (See MURDER, FIRST AND SECOND DEGREE)  
 Obscene . . . 9.27A  
 Obscenity . . . 9.27  
 Offense . . . 4.07  
 Omission as voluntary act . . . 4.14  
 Organized gang . . . 4.20  
 Pandering . . . 9.15  
 Peace officer . . . 4.08  
 Penal institution . . . 4.09  
 Person . . . 4.10  
 Personally discharging firearm . . . 4.37  
 Physically handicapped person . . . 4.10A; 4.29  
 Pierce . . . 4.39  
 Pimping . . . 9.23  
 Possession . . . 4.16  
 Possession as voluntary act . . . 4.15  
 Preponderance of evidence . . . 4.18  
 Property of another . . . 4.40  
 Prostitute . . . 9.21  
 Prostitution . . . 9.09  
 Proximate cause . . . 4.24  
 Public employee . . . 4.11  
 Public indecency . . . 9.03  
 Public officer . . . 4.12  
 Ransom . . . 8.04A  
 Reasonable belief . . . 4.13  
 Reckless conduct . . . 11.37  
 School speed zone . . . 4.23  
 Signature device . . . 5.14  
 Solicitation (See SOLICITATION)  
 Sports venue . . . 4.27  
 Strangle . . . 11.107A  
 Street gang . . . 4.20-22  
 Tattoo . . . 4.38  
 Trafficking in persons . . . 8.31; 8.31A  
 Transit employee . . . 4.32  
 Transit passenger . . . 4.33  
 Unborn child . . . 7.24  
 Unborn child, involuntary manslaughter of . . . 7.20  
 Unborn child, reckless homicide of . . . 7.22  
 Unlawful restraint . . . 8.06  
 Utility worker . . . 4.31

**DELIBERATIONS**

Interpreter, use of during . . . 1.06  
 Notes, use of during . . . 1.05

**DRIVING UNDER THE INFLUENCE**

Aggravated  
 Alcohol concentration of 0.08 or more (See subhead:  
 Aggravated driving with alcohol concentration of  
 0.08 or more)  
 Bodily harm to a child under the age of 16  
 Definition . . . 23.67B  
 Issues in . . . 23.68B  
 Death, accident resulting in . . . 23.51A; 23.52A  
 Driver's license, defendant does not possess  
 Definition . . . 23.67E  
 Issues in . . . 23.68E  
 Injuries, accident resulting in . . . 23.51; 23.52  
 Intoxicating compound, aggravated driving under the  
 influence of (See subhead: Intoxicating compound,  
 aggravated driving under the influence of)  
 Liability insurance, driving without  
 Definition . . . 23.67D  
 Issues in . . . 23.68D  
 Proximate cause defined; accident and injury as en-  
 hancing factor . . . 23.28a  
 School bus, driving . . . 23.49; 23.50  
 School bus driven with persons 18 years old or un-  
 der  
 Definition . . . 23.67F  
 Issues in . . . 23.68F  
 School speed zone, accident while driving in as en-  
 hancing factor  
 Definition . . . 23.67C  
 Issues in . . . 23.68C  
 Aggravated driving with alcohol concentration of 0.08  
 or more  
 Bodily harm to a child under 16, accident resulting  
 in  
 Definition . . . 23.65B  
 Issues in . . . 23.66B  
 Death, accident resulting in  
 Definition . . . 23.47a  
 Issues in . . . 23.48A  
 Driver's license, defendant does not possess  
 Definition . . . 23.65E  
 Issues in . . . 23.66E  
 Injuries, accident resulting in  
 Definition . . . 23.47  
 Issues in . . . 23.48  
 Liability insurance, driving without  
 Definition . . . 23.65D  
 Issues in . . . 23.66D  
 School bus, driving  
 Definition . . . 23.45  
 Issues in . . . 23.46  
 School bus driven with persons 18 years old or un-  
 der  
 Definition . . . 23.65F  
 Issues in . . . 23.66F  
 School speed zone, accident while driving in as en-  
 hancing factor  
 Definition . . . 23.65C  
 Issues in . . . 23.66C  
 Alcohol, driving under the influence of  
 Combined influence of alcohol and drugs (See sub-  
 head: Combined influence of alcohol and drugs)



[References are to sections.]

**DRIVING UNDER THE INFLUENCE—Cont.****Alcohol, driving under the influence of—Cont.****Concentration of alcohol of 0.08 or more**

Aggravated (See subhead: Aggravated driving with alcohol concentration of 0.08 or more)

Definition . . . 23.19

Issues in . . . 23.20

Definition . . . 23.13

Issues in . . . 23.14

**Alcohol concentration defined . . . 23.30A****Combined influence of alcohol and drugs****Aggravated**

Bodily harm to a child under 16, accident resulting in . . . 23.73B; 23.74B

Death, accident resulting in . . . 23.59A; 23.60A

Driver's license, defendant does not possess

. . . 23.73E; 23.74E

Injuries, accident resulting in . . . 23.59; 23.60

Liability insurance, driving without . . . 23.73D; 23.74D

School bus, driving . . . 23.57; 23.58

School bus driven with persons 18 years old or under . . . 23.73F; 23.74F

School speed zone, accident while driving in as enhancing factor . . . 23.73C; 23.74C

Definition . . . 23.17

Issues in . . . 23.18

**Drug, substance or compound in blood or urine****Aggravated**

Death, accident resulting in . . . 23.63A; 23.64A

Injuries, accident resulting in . . . 23.63; 23.64

School bus, driving . . . 23.61; 23.62

**Drug, substance or compound in breath, blood or urine****Aggravated**

Bodily harm to a child under 16, accident resulting in . . . 23.75B; 23.76B

Driver's license, defendant does not possess

. . . 23.75E; 23.76E

Liability insurance, driving without . . . 23.75D; 23.76D

School bus driven with persons 18 years old or under . . . 23.75F; 23.76F

School speed zone, accident while driving in as enhancing factor . . . 23.75C; 23.76C

**Drugs, driving under the influence of****Aggravated**

Bodily harm to a child under 16 . . . 23.71B; 23.72B

Death, accident resulting in . . . 23.55a; 23.56a

Driver's license, defendant does not possess

. . . 23.71E; 23.72E

Injuries, accident resulting in . . . 23.55; 23.56

Liability insurance, driving without . . . 23.71D; 23.72D

School bus, driving . . . 23.53; 23.54

School bus driven with persons 18 years old or under . . . 23.71F; 23.72F

School speed zone, accident while driving in as enhancing factor . . . 23.71C; 23.72C

Definition . . . 23.15

**Drug, substance or compound in blood or urine**

Definition . . . 23.21

Issues in . . . 23.22

**DRIVING UNDER THE INFLUENCE—Cont.****Drugs, driving under the influence of—Cont.**

Drug, substance or compound in breath, blood or urine (See subhead: Drug, substance or compound in blood or urine)

Issues in . . . 23.16

Prescription not a defense . . . 23.30B

**Felony, as**

Accident as enhancing factor . . . 23.27; 23.28

Occupied school bus, driving as enhancing factor . . . 23.25; 23.26

**Intoxicating compound, aggravated driving under the influence of**

Bodily harm to a child under 16, accident resulting in

Definition . . . 23.69B

Issues in . . . 23.70B

Driver's license, defendant does not possess

Definition . . . 23.69E

Issues in . . . 23.70E

Liability insurance, driving without

Definition . . . 23.69D

Issues in . . . 23.70D

School bus driven with persons 18 years old or under

Definition . . . 23.69F

Issues in . . . 23.70F

School speed zone, accident while driving in as enhancing factor

Definition . . . 23.69C

Issues in . . . 23.70C

**Possession of alcoholic liquor in motor vehicle by passenger**

Definition . . . 23.69

Issues in . . . 23.70

**Presumptions on . . . 23.30**

"Under the influence of alcohol" defined . . . 23.29

**DRUG OFFENSES**

Cannabis (See CANNABIS)

Controlled substances (See CONTROLLED SUBSTANCES)

**E****EAVESDROPPING**

Conversation defined . . . 12.05B

**Device, use of**

Definition . . . 12.01-12.01X

"Device" defined . . . 12.05

Issues in . . . 12.02-12.02X

**Information, use or divulgence of**

Definition . . . 12.03-12.03X

Issues . . . 12.04-12.04X

"Known by the parties to be present," definition of . . . 12.05A

**ELDERLY OR DISABLED PERSON, CRIMINAL NEGLECT OF**

Abandon, definition of . . . 11.75D

Caregiver, definition of . . . 11.75A

Definition . . . 11.75

Disabled person, definition of . . . 11.75C



[References are to sections.]

### ELDERLY OR DISABLED PERSON, CRIMINAL NEGLECT OF—Cont.

Elderly person, definition of . . . 11.75B  
Issues in neglect . . . 11.76

### ENHANCEMENT AND EXTENDED TERM SENTENCING INSTRUCTIONS

Generally . . . 28.00  
Bifurcated instructions  
    Concluding instruction . . . 28A.03  
    Duties of jury . . . 28A.01  
    Functions of court . . . 28A.01  
    General . . . 28A.02  
    Hearing, nature of . . . 28A.01  
Factors  
    Burden of proof . . . 28.02  
    Concluding instruction . . . 28.04  
    Issues in . . . 28.03  
    Presumption of innocence . . . 28.02  
    Reasonable doubt . . . 28.02  
    Review of . . . 28.01

#### Verdict forms

Allegation not proven . . . 28.05  
Allegation proven . . . 28.06

### ENTRAPMENT AS DEFENSE

Definition . . . 24-25.04  
Issues in . . . 24-25.04A

### ESCAPE

#### Aiding

Armed, while  
    Definition . . . 22.35  
    Issues in . . . 22.36  
Definition . . . 22.33  
Issues in . . . 22.34  
Officer of a penal institution  
    Definition . . . 22.37  
    Issues in . . . 22.38

#### Armed escape

Custody, in  
    Definition . . . 22.31  
    Issues in . . . 22.32  
Penal institution or work release  
    Definition . . . 22.29  
    Issues in . . . 22.30

#### Custody, in

Armed escape  
    Definition . . . 22.31  
    Issues in . . . 22.32  
Definition . . . 22.27  
Issues in . . . 22.28

#### Electronic home monitoring detention program, failure to comply with

Definition . . . 22.75  
Issues with . . . 22.76

#### Penal institution or work release

Armed escape  
    Definition . . . 22.29  
    Issues in . . . 22.30  
Definition . . . 22.25  
Issues in . . . 22.26

### EVIDENCE

Clear and convincing; definition . . . 4.19  
Preponderance of; definition . . . 4.18  
Types of used in jury instructions  
    Accomplice, testimony of . . . 3.17  
    Circumstantial evidence, defining . . . 3.02  
    Date of offense charged . . . 3.01  
    Defendant, statements by . . . 3.06-3.07  
    Dying declaration . . . 3.09  
    Expert testimony, weighing . . . 3.18  
    Flight . . . 3.03  
    Identification, circumstances of . . . 3.15  
    Informant testimony, weighing . . . 3.21  
    Interview of witness, attorney or attorney investiga-  
        tor's right to conduct . . . 3.10  
    Law enforcement identification opinion evidence  
        . . . 3.15B  
    Line-up identification, circumstances of law enforce-  
        ment . . . 3.15A  
    Motive . . . 3.04  
    Multiple defendants, statements by . . . 3.08  
    Opinion evidence, law enforcement identification  
        . . . 3.15B  
    Other offenses, proof of . . . 3.14  
    Police testimony, weighing . . . 3.19  
    Prior conviction  
        Impeachment of witness by . . . 3.12X-3.13X  
        Proof of . . . 3.12X-3.13X  
        Violent act . . . 3.12X-3.13X  
    Prior inconsistent statements . . . 3.11  
    Reputation, evidence of defendant's . . . 3.16  
    Separate considerations for each defendant . . . 3.05  
    Transcripts of tape-recorded conversation, using  
        . . . 3.20

### EXPLOSIVES OR INCENDIARY DEVICE, POS- SESSION OF

Definition . . . 15.05  
Intent to use, issues in . . . 15.06  
Knowing of another's intended use, issues in  
    . . . 15.06A

## F

### FALSE DOCUMENT

Defined . . . 13.42A

### FELONY

Definition . . . 4.04  
Forcible felony . . . 4.05

### FELONY MURDER

Accountability . . . 5.03A  
Causation . . . 7.15A  
Guilty of underlying felony, requirement that defendant  
    be . . . 7.02X

### FIREARMS (See WEAPONS)

### FLEEING OR ATTEMPTING TO ELUDE A PO- LICE OFFICER

Aggravated  
    Bodily injury  
        Definition . . . 23.03x

[References are to sections.]

**FLEEING OR ATTEMPTING TO ELUDE A POLICE OFFICER—Cont.****Aggravated—Cont.****Bodily injury—Cont.**

Issues . . . 23.04X

**Damage to property**

Definition . . . 23.03

Issues in . . . 23.04

Definition . . . 23.01

Issues in . . . 23.02

**FORCE, USE OF AS DEFENSE**

Dwelling, use in defense of . . . 24-25.07

Felon, forcible not entitled to use force . . . 24-25.10

Initial aggressor's use of . . . 24-25.09

Justifiable use of, issue in . . . 24-25.06A

Likely to cause death or great bodily harm defined . . . 24-25.15

Non-initial aggressor, no duty to retreat . . . 24-25.09X

**Peace officer's use of force**

Arrest, making . . . 24-25.12

Custody, use to prevent escape from . . . 24-25.13

Penal institution . . . 24-25.14

Perjury, exemption to; contradictory statements . . . 24-25.26

Person, use in defense of . . . 24-25.06

**Private person, use of force****Escape, preventing**

Police officer, not summoned by . . . 24-25.18

Police officer, summoned by . . . 24-25.19

**Making arrest, in**

Police officer, not summoned by . . . 24-25.16

Police officer, summoned by . . . 24-25.17

Resisting arrest . . . 24-25.16

Property, use in defense of . . . 24-25.08

Retaliation, provocation of first force as excuse for . . . 24-25.11

**FORGERY**

Definition . . . 13.39; 13.39A

Document, definition of . . . 13.42

Issues in . . . 13.40; 13.40A

**G****GAMBLING**

Definition . . . 20.01

Device, gambling defined . . . 20.01A

Issues in . . . 20.02

**Keeping a gambling place**

Definition . . . 20.03

Issues in . . . 20.04

Lottery defined . . . 20.01B

Policy game defined . . . 20.01C

**Syndicated gambling****Bookmaking**

Definition . . . 20.07

Issues in . . . 20.08

**Policy**

Definition . . . 20.05

Issues in . . . 20.06

**GUILTY BUT MENTALLY ILL**

Generally . . . 24-25.01B

Concluding instructions (See **CONCLUDING INSTRUCTIONS**)

Insanity defense, issues when jury not instructed on . . . 24-25.01I

Jury instructed on, issues when . . . 24-25.01D

Mentally ill defined . . . 24-25.01C

Murder, first and second degree (belief in justification)

Insanity defense, jury not instructed on . . . 24-25.01K

Jury instructed on this verdict . . . 24-25.01H

Jury not instructed on this verdict . . . 24-25.01G

Murder, first and second degree (provocation)

Insanity defense, jury not instructed on . . . 24-25.01J

Jury instructed on this verdict . . . 24-25.01F

Jury not instructed on this verdict . . . 24-25.01E

**GUNRUNNING**

Definition . . . 18.43

Issues in . . . 18.44

**H****HATE CRIME**

Definition . . . 11.47

Issues in . . . 11.48

Sexual orientation . . . 11.47A

**HAZING**

Definition . . . 11.101

Issues . . . 11.102

**HIV, CRIMINAL TRANSMISSION OF**

Affirmative defense . . . 11.67A

Definition of criminal transmission . . . 11.67

HIV, definition of . . . 11.67B

Intimate contact with another, definition of . . . 11.67C

Intravenous or intramuscular drug paraphernalia, definition of . . . 11.67D

Issues in transmission . . . 11.68

**HOME INVASION**

Definition . . . 11.53

Injury, definition of . . . 11.53B

Issues in home invasion . . . 11.54

Limited authority doctrine . . . 11.53A

Residential burglary . . . 11.53A

Unauthorized entry . . . 11.53A

**HOME INVASION AS DEFENSE**

Definition . . . 24-25.25

Issue in . . . 24-25.25A

**HOME REPAIR FRAUD****Aggravated**

Definition . . . 13.72

Issues in . . . 13.73

**Agreement or contract**

Definition . . . 13.64

Issues in . . . 13.65

Unconscionable (See subhead: Unconscionable agreement or contract)

[References are to sections.]

**HOME REPAIR FRAUD—Cont.**

Assumed Business Name Act

Definition . . . 13.68

Issues in . . . 13.69

Definition . . . 13.64

“Home repair” defined . . . 13.64A

Property damage or noncontracting misrepresentation

Definition . . . 13.70

Issues in . . . 13.71

Residence defined . . . 13.64B

Unconscionable agreement or contract

Definition . . . 13.66

Issues in . . . 13.67

“Unconscionable” defined . . . 13.66A

**HOMICIDE**

Causation

Felony murder . . . 7.15A; 7.15B

Other than felony murder . . . 7.15

Concealment of homicidal death

Conceal defined . . . 7.14

Defined . . . 7.11

Issues in concealment . . . 7.12

Drug induced

Controlled substances

Definition . . . 7.27

Issues . . . 7.28

LSD, delivery of objects or segregated parts contain-

ing

Definition . . . 7.29

Issues . . . 7.30

Felony murder (See FELONY MURDER)

Homicidal means defined . . . 7.13

Involuntary manslaughter

Defined . . . 7.07

First and second degree murder also charged

. . . 7.04X; 7.06X; 7.06Y

Issues in manslaughter . . . 7.08

Unborn child

Defined . . . 7.20

Issues . . . 7.21

Murder, first and second degree (See MURDER, FIRST AND SECOND DEGREE)

Reckless homicide

Aggravated reckless homicide

Alcohol, under the influence of . . . 7.09X

Definition . . . 7.09A

Issues . . . 7.10A

Definition . . . 7.09

Inferences of reckless conduct . . . 7.09Y

Issues . . . 7.10

Unborn child

Definition . . . 7.22

Issues . . . 7.23

Under the influence of alcohol—aggravated reckless homicide . . . 7.09X

Unborn child

Abortion under Illinois law excluded from homicide charges . . . 7.26

Definition . . . 7.24

Intentional homicide

Defined . . . 7.16

Issues . . . 7.17

**HOMICIDE—Cont.**

Unborn child—Cont.

Intentional homicide—Cont.

Justification, belief in . . . 7.19C

Provocation . . . 7.19A

Voluntary manslaughter, jury also instructed on . . . 7.19C

Involuntary manslaughter

Defined . . . 7.20

Issues . . . 7.21

Pregnant woman, person defined as not including

. . . 7.25

Reckless homicide

Definition . . . 7.22

Issues . . . 7.23

Voluntary manslaughter

Justification, belief in . . . 7.18A; 7.19C

Provocation . . . 7.18; 7.19B

Transferred intent . . . 7.19B

**I****INCHOATE OFFENSES**

Attempt (See ATTEMPT)

Conspiracy, other than certain drug conspiracies

Definition of . . . 6.03

Issues in . . . 6.04

Solicitation (See SOLICITATION)

**INDICTMENT**

Evidential status of . . . 2.02

**INFORMATION**

Evidential status of . . . 2.02

**INSANITY, DEFENSE OF**

Burden of proof . . . 2.03B

Concluding instructions (See CONCLUDING INSTRUCTIONS)

Definition . . . 24-25.01

Guilty but mentally ill (See GUILTY BUT MENTALLY ILL)

Issues in . . . 24-25.01A

Verdict form, not guilty . . . 26.03

**INSURANCE FRAUD**

Aggravated

Definition . . . 13.58

Issues in . . . 13.59

Aggravated conspiracy, organizing

Definition . . . 13.62

Issues in . . . 13.63

Precluded defenses . . . 13.62A

Conspiracy

Aggravated conspiracy, organizing (See subhead:

Aggravated conspiracy, organizing)

Definition . . . 13.60

Issues in . . . 13.61

Precluded defenses to . . . 13.60A

Definition . . . 13.56

Issues in . . . 13.57

Value defined . . . 13.56A



[References are to sections.]

**INTERFERENCE WITH JUDICIAL OR OTHER GOVERNMENTAL FUNCTION**

- Alcohol screening test (See subhead: Drug and alcohol screening test)
- Drug and alcohol screening test
  - Definition . . . 22.77A
  - Defrauding drug and alcohol screening test, definition of . . . 22.77
  - Inferences . . . 22.77B
  - Issues . . . 22.77C
- Harassment of juror or witness
  - Child representative or family member of child representative . . . 22.11AA-22.12AA
  - Family member
    - Defined . . . 22.11Z
    - Included in definition (as of 1/1/95) . . . 22.11Y-22.12Y
  - Mental anguish or emotional distress, communication producing (until 1/1/95) . . . 22.11-22.12
  - Representative of child defined . . . 22.11BB
  - Threat, conveying (until 1/1/95) . . . 22.11X-22.12X
- Juror, communicating with
  - Definition . . . 22.07
  - Issues in . . . 22.08
- Perjury (See PERJURY)
- Resisting or obstructing peace officer or correctional institution employee (See **RESISTING OR OBSTRUCTING PEACE OFFICER OR CORRECTIONAL INSTITUTION EMPLOYEE**)
- Witness, communicating with
  - Definition . . . 22.09
  - Issues in . . . 22.10-22.10X

**INTERPRETER**

- Deliberations, use of during . . . 1.06

**INTIMIDATION**

- Aggravated intimidation
  - Definition . . . 11.41X
  - Issues in . . . 11.42X
- Definition . . . 11.41
- Issues in intimidation . . . 11.42

**INTOXICATION OR DRUGGED CONDITION AS DEFENSE**

- Involuntary
  - Definition of . . . 24-25.03
  - Issue in . . . 24-25.03A
- Voluntary
  - Definition of . . . 24-25.02
  - Issue in . . . 24-25.02A

**INVOLUNTARY MANSLAUGHTER (See HOMICIDE)****J****JURORS**

- Admonishing during trial, suggested Rule 436 instruction . . . 26.08
- Sending home for night during deliberations, suggested Rule 436 instruction on . . . 26.09

**JURY**

- Functions of . . . 1.01
- Implicit bias . . . 1.01B

**K****KIDNAPPING**

- Aggravated kidnapping
  - Deceit or enticement . . . 8.05B
  - Definition . . . 8.04
  - Force or threat, use of . . . 8.05A
  - Ransom, definition of . . . 8.04A
  - Secret confinement . . . 8.05
- Child abduction
  - Affirmative defenses to . . . 8.17
- Aiding and abetting
  - Affirmative defenses . . . 8.19A
  - Defense of, issue in . . . 8.19B
  - Defined . . . 8.18
  - Issues in . . . 8.19
- Child defined . . . 8.13
- Defined . . . 8.11
- Detains defined . . . 8.14
- Harboring a runaway
  - Defined . . . 8.20
  - Issues in . . . 8.21
- Issues in . . . 8.16
- Lawful custodian defined . . . 8.15
- Luring a minor
  - Defenses to . . . 8.26A
  - Defined . . . 8.25
  - Issues in . . . 8.26
- Putative father defined . . . 8.12
- Unlawful purpose in . . . 8.11A
- Unlawful visitation or parenting time interference
  - Affirmative defenses . . . 8.24
  - Defined . . . 8.22
  - Issues in . . . 8.23; 8.24A
- Child under 13, confinement of . . . 8.03
- Definition . . . 8.01
- Failure to report the death or disappearance of a child under 13 years of age
  - Defenses to . . . 8.34A
  - Defined . . . 8.33
  - Issues in . . . 8.34
- Forcible detention
  - Defined . . . 8.09
  - Issues in . . . 8.10
- Involuntary servitude
  - Defined . . . 8.27
  - Issues in . . . 8.28
- Issues in . . . 8.02
- Ransom, definition of . . . 8.04A
- Sexual servitude, minor's involuntary
  - Defined . . . 8.29
  - Issues in . . . 8.30
- Trafficking in persons
  - Defined . . . 8.31; 8.31A
  - Issues in . . . 8.32; 8.32A
- Unlawful restraint
  - Aggravated unlawful restraint
    - Definition of . . . 8.06A
    - Issues in . . . 8.07A



[References are to sections.]

**KIDNAPPING—Cont.****Unlawful restraint—Cont.**

Definition . . . 8.06

Issue in . . . 8.07

Shopkeeper's defense . . . 8.08

**L****LESSER INCLUDED OFFENSES****Charging instructions**

Including . . . 2.01Q-X

Without . . . 2.01Y-2.01AA

**Concluding (See CONCLUDING INSTRUCTIONS)****LONG TERM CARE FACILITY RESIDENT****Abuse of resident**

Definition . . . 11.69

Issues . . . 11.70

Long term care facility defined . . . 11.69A

**Gross neglect of resident**

Definition . . . 11.71

Issues . . . 11.72

**M****MENTAL STATE**

Generally . . . 5.02A

Actual knowledge . . . 5.01C

Intent . . . 5.01A

Knowledge . . . 5.01B

Negligence . . . 5.02

Other mental states . . . 5.02A

Recklessness . . . 5.01

Wantonness . . . 5.01

Willfulness . . . 5.01B

**MISDEMEANOR**

Definition . . . 4.06

**MISTAKE OF FACT, DEFENSE OF**

Definition . . . 24-25.24

Issues in . . . 24-25.24A

**MOB ACTION****Disorderly conduct**

Definition . . . 19.07

Issues in . . . 19.08

**Harassment by telephone**

Definition . . . 19.09

Issues in . . . 19.10

**Picketing, residential**

Definition . . . 19.11

Issues in . . . 19.12

**Unlawful assembly**

Definition . . . 19.01

Issues in . . . 19.02

**Violent infliction of injury**

Definition . . . 19.03

Issues in . . . 19.04

**Withdraw, failure to**

Definition . . . 19.05

Issues in . . . 19.06

**MURDER, FIRST AND SECOND DEGREE**

Accountability . . . 5.03A

Burden of proof . . . 2.03A

**Charging instructions**

Involuntary manslaughter, with . . . 2.01I-P

No involuntary manslaughter . . . 2.01A-H

**Concluding instructions (See CONCLUDING INSTRUCTIONS)****Felony murder (See FELONY MURDER)****First degree murder**

Attempt . . . 6.05X-6.05XX

Categories of murder, explanation to jurors of  
. . . 7.01X

Definition . . . 7.01; 7.01B

Involuntary manslaughter and second degree murder  
also charged . . . 7.04X; 7.06X; 7.06Y

Issues . . . 7.02; 7.02B

Mitigating factor . . . 7.03

Provocation . . . 7.03; 7.04

Second degree murder also charged

Justification, belief in . . . 7.06; 7.06B

Provocation . . . 7.04; 7.06B

**Guilty but mentally ill (See GUILTY BUT MENTALLY ILL)**

Presumption of innocence . . . 2.03A

Reasonable doubt . . . 2.03A

**Second degree murder**

Definition when first degree murder is not charged  
. . . 7.01S

First degree murder not charged . . . 7.02S

Involuntary manslaughter also charged . . . 7.04X

Justification, belief in . . . 7.05; 7.06

Mitigating factor . . . 7.05

Provocation . . . 7.03; 7.04

**N****NECESSITY, DEFENSE OF**

Definition . . . 24-25.22

Issues in . . . 24-25.22A

**NOTETAKING**

Deliberations, use of notes taken . . . 1.05

Permissibility . . . 1.05

**O****OBSCENITY**

Affirmative defenses . . . 9.27C

Definition . . . 9.27

Intent to disseminate, inferences of . . . 9.27B

Issues in . . . 9.28

Obscene defined . . . 9.27A

**OBSTRUCTING JUSTICE**

Concealing or aiding a fugitive

Definition . . . 22.23

Issues in . . . 22.24

Definition . . . 22.19

Escape (See ESCAPE)

Flight of witness

Definition . . . 22.21

Issues in . . . 22.22

[References are to sections.]

## **OBSTRUCTING JUSTICE—Cont.**

Issues in . . . 22.20

## **OPENING STATEMENT**

Evidence, arguments not based on . . . 1.03

Preliminary instructions . . . 1.01A

Purpose of . . . 1.03

## **ORDER OF PROTECTION, VIOLATION OF**

Abuse, definition of . . . 11.78C

Definition . . . 11.77

Exploitation, definition of . . . 11.78D

Family or household member, definition of . . . 11.78A

Harassment, definition of . . . 11.78E

High risk adult with disabilities, definition of . . . 11.78B

Interference with personal liberty, definition of . . . 11.78F

Intimidation of a dependent, definition of . . . 11.78G

Issues in . . . 11.78

Neglect, definition of . . . 11.78H

Physical abuse, definition of . . . 11.78I

Willful deprivation, definition of . . . 11.78J

## **P**

## **PERJURY**

Contradictory statements

Definition . . . 22.03

Issues in . . . 22.04

Definition . . . 22.01

Issues in, generally . . . 22.02

"Material" defined . . . 22.01A

Oath or affirmation required . . . 22.01B

Subornation of

Definition . . . 22.05

Issues in . . . 22.06

## **POSSESSION**

Definition of . . . 4.16

## **PREDATORY CRIMINAL SEXUAL ASSAULT OF A CHILD**

Definition . . . 11.103

Great bodily harm, firearm or controlled substance

Definition . . . 11.105

Issues in . . . 11.106

Issues in assault . . . 11.104

## **PRELIMINARY INSTRUCTIONS**

Cautionary . . . 1.01A

Opening statement, prior to . . . 1.01A

## **PRESUMPTION OF INNOCENCE**

Generally . . . 2.03

Insanity defense . . . 2.03B.

Murder, first and second degree . . . 2.03A

## **PROSTITUTION**

Definition . . . 9.09

Issue in . . . 9.10

Juvenile pimping or pimping for institutionalized mentally retarded person

Affirmative defense to . . . 9.25A

Definition . . . 9.25

## **PROSTITUTION—Cont.**

Juvenile pimping or pimping for institutionalized mentally retarded person—Cont.

Issues in . . . 9.26

Juvenile prostitute or institutionalized mentally retarded person, soliciting for

Affirmative defense to . . . 9.13A

Definition . . . 9.13

Issues in . . . 9.14

Keeping a place of prostitution

Definition . . . 9.17

Issues in . . . 9.18

Pandering

Definition . . . 9.15

Issues in . . . 9.16

Patronizing a prostitute

Definition . . . 9.19

Issue in . . . 9.20

Pimping

Definition . . . 9.23

Issues in . . . 9.24

Juvenile pimping or pimping for institutionalized mentally retarded person (See subhead: Juvenile pimping or pimping for institutionalized mentally retarded person)

Place of prostitution; definition . . . 9.22

Prostitute defined . . . 9.21

Soliciting for prostitute

Definition . . . 9.11

Issue in . . . 9.12

Juvenile prostitute or institutionalized mentally retarded person, soliciting for (See subhead: Juvenile prostitute or institutionalized mentally retarded person, soliciting for)

## **PROXIMATE CAUSE**

Definitions . . . 4.24

## **R**

## **REASONABLE BELIEF**

Definition . . . 4.13

## **REASONABLE DOUBT**

Generally . . . 2.03

Defined . . . 2.05

Insanity defense . . . 2.03B

Murder, first and second degree . . . 2.03A

## **REFUSING TO AID OFFICER**

Definition . . . 22.39

Issues in . . . 22.40

**RESIDENTIAL BURGLARY** (See **BURGLARY**, subhead: Residential burglary)

## **RESISTING OR OBSTRUCTING PEACE OFFICER OR CORRECTIONAL INSTITUTION EMPLOYEE**

Bail bond, violation of

Definition . . . 22.53

Issues in . . . 22.54

Possessing firearm, by

Definition . . . 22.53A; 22.74

[References are to sections.]

**RESISTING OR OBSTRUCTING PEACE OFFICER OR CORRECTIONAL INSTITUTION EMPLOYEE—Cont.**

- Bail bond, violation of—Cont.
  - Possessing firearm, by—Cont.
  - Issues in . . . 22.54A
- Compounding a crime
  - Definition . . . 22.41
  - Issues in . . . 22.42
- Contraband (See CONTRABAND)
- Correctional institution employee; definition . . . 22.13
- Definition . . . 22.13A
- Disarming a peace officer
  - Definition . . . 22.15
  - Issues in . . . 22.16
- Escape (See ESCAPE)
- False personation of judicial or governmental official
  - Definition . . . 22.43
  - Issues in . . . 22.44
- False personation of police officer
  - Aggravated
    - Definition . . . 22.72
    - Issues in . . . 22.73
  - Definition . . . 22.70
  - Issue in . . . 22.71
- Issues in . . . 22.14
- Obstructing justice (See OBSTRUCTING JUSTICE)
- Refusing to aid officer
  - Definition . . . 22.39
  - Issues in . . . 22.40
- Service of process, obstructing
  - Definition . . . 22.17
  - Issues in . . . 22.18
- Simulating legal process
  - Definition . . . 22.47
  - Issues in . . . 22.48
- Tampering with public notice
  - Definition . . . 22.51
  - Issues with . . . 22.52
- Tampering with public records
  - Definition . . . 22.49
  - Issues with . . . 22.50
- Unauthorized act, performance of
  - Definition . . . 22.45
  - Issues in . . . 22.46

**RESPONSIBILITY**

- Act of another, for
  - Actor not legally responsible . . . 5.05
  - Actor not prosecuted . . . 5.06
  - Withdrawal . . . 5.04
- Corporate
  - Agent, act of . . . 5.07
  - Authorized acts . . . 5.08
  - Defense . . . 5.09
  - High managerial agent, definition of . . . 5.10
- Personal responsibility of corporate agent . . . 5.11

**RETAIL THEFT**

- Altering, transferring, removing price indicia . . . 13.44A
- Concealed merchandise
  - Definition . . . 13.45A

**RETAIL THEFT—Cont.**

- Concealed merchandise—Cont.
  - Inference arising from . . . 13.45
- Definition . . . 13.43
- False representation . . . 13.44E
- Full retail value defined . . . 13.46
- Lessee . . . 13.44G
- Merchandise defined . . . 13.46A
- Merchant defined . . . 13.46B
- Person defined . . . 13.46I
- Premises of retail mercantile establishment defined . . . 13.46D
- Retail mercantile establishment defined . . . 13.46C
- Shopping cart defined . . . 13.46F
- Shopping cart theft . . . 13.44D
- Taking possession, issues in . . . 13.44
- Theft detection device remover defined . . . 13.46H
- Theft detection shield device or device remover . . . 13.44F
- Theft detection shielding device defined . . . 13.46G
- Transferring . . . 13.44B
- Under-ring defined . . . 13.46E
- Under-rings . . . 13.44C

**RITUAL MUTILATION**

- Definition . . . 11.81
- Issues . . . 11.82

**ROBBERY**

- Aggravated
  - Definition . . . 14.19
  - Issues in . . . 14.20
- Armed robbery
  - Definition . . . 14.05
  - Issues in . . . 14.06
- Burglary (See BURGLARY)
- Definition . . . 14.01
- Issues in . . . 14.02
- Vehicular hijacking (See VEHICULAR HIJACKING)
- Victim 60 years old or older or is physically handicapped
  - Definition . . . 14.03
  - Issues in . . . 14.04

**S****SAMPLE INSTRUCTIONS**

- Concluding . . . Ch. 27

**SEX OFFENSES**

- Bigamy (See BIGAMY)
- Child pornography (See CHILD PORNOGRAPHY)
- Custodial sexual misconduct (See CUSTODIAL SEXUAL MISCONDUCT)
- Definition . . . 9.43B
- Failure to register as a sex offender
  - Definition of . . . 9.43F
  - Duty to register . . . 9.43G
  - Duty to report . . . 9.43I
  - Issues in . . . 9.43H
- Harmful material, distributing
  - Affirmative defenses to . . . 9.31B
  - Definitions . . . 9.31; 9.31A



[References are to sections.]

**SEX OFFENSES—Cont.**

## Harmful material, distributing—Cont.

Issues in . . . 9.32

## HIV, criminal transmission of (See HIV, CRIMINAL TRANSMISSION OF)

## Indecent solicitation of a child

Age, belief of no defense . . . 9.01B

Consent of child no defense . . . 9.02A

Definition . . . 9.01

Issues in . . . 9.02

Solicit or solicitation defined . . . 9.01A; 9.01C

## Indecent solicitation of an adult

Definition . . . 9.41

Issues . . . 9.42

## “Law enforcement agency having jurisdiction” defined . . . 9.43C

## Long term care facility resident, abuse of (See LONG TERM CARE FACILITY RESIDENT)

## Obscenity (See OBSCENITY)

## “Out-of-state employee” defined . . . 9.43E

## “Out-of-state student” defined . . . 9.43D

## Prostitution (See PROSTITUTION)

## Public indecency

Definition . . . 9.03

Issues in . . . 9.04

## “Sex offender” defined . . . 9.43

## Sexual abuse, criminal (See SEXUAL ABUSE, CRIMINAL)

## Sexual abuse of a child (See SEXUAL ABUSE OF A CHILD)

## Sexual assault, criminal (See SEXUAL ASSAULT, CRIMINAL)

## Sexual exploitation of a child (See SEXUAL EXPLOITATION OF A CHILD)

## “Sexual predator” defined . . . 9.43A

## Sexual relations within families

Definition . . . 9.33

Issues in . . . 9.34

## Solicitation of a sexual act

Definition . . . 9.39

Issue in . . . 9.40

**SEXUAL ABUSE, CRIMINAL**

## Accused defined . . . 11.65

## Aggravated

Age, aggravation by . . . 11.62A

Age when defendant is family member or in position of responsibility or trust . . . 11.62B

Circumstances, aggravation by . . . 11.62

Defense to . . . 11.64

Definition . . . 11.61

## Bodily harm defined . . . 11.65A

## Consent

Defense, as . . . 11.63

Definition . . . 11.63A

## Defense to . . . 11.64

## Definition . . . 11.59

## Family member defined . . . 11.65B

## Force defined . . . 11.65C

## Issues in abuse . . . 11.60

## Section 115-10 of Code of Criminal Procedure, statements admitted under . . . 11.66

**SEXUAL ABUSE, CRIMINAL—Cont.**

## Severely or profoundly intellectually disabled person, definition of . . . 11.65G

## Sexual conduct defined . . . 11.65D

## Sexual penetration defined . . . 11.65E

## Threat of force defined . . . 11.65C

## Victim defined . . . 11.65F

## Welfare of child, definition of person responsible for . . . 11.65H

**SEXUAL ABUSE OF A CHILD**

## Permitting

Definition . . . 11.99

Issues in . . . 11.100

**SEXUAL ASSAULT, CRIMINAL**

## Aggravated

Age definition of criminal sexual abuse . . . 11.58B

Circumstances, aggravation by . . . 11.58

Definition of . . . 11.57

Family member as defendant . . . 11.58A

## Definition . . . 11.55

## Issues in assault . . . 11.56

**SEXUAL EXPLOITATION OF A CHILD**

## Definition . . . 9.37

## Exploitation of a child or institutionalized mentally retarded person, generally

Definition . . . 9.35

Issues in . . . 9.36

Lack of consent in . . . 9.35A

## Issues in . . . 9.38

**SEXUAL ORIENTATION**

## Hate crimes . . . 11.47A

**SIGNATURE**

## Digital signature defined . . . 5.12

## Electronic signature defined . . . 5.13

## Signature device defined . . . 5.14

**SOLICITATION**

## Murder, of

Definition . . . 6.01A; 6.01C

First degree murder defined . . . 6.01C

Issues in . . . 6.02A

## Murder for hire

Definition . . . 6.01B

First degree murder defined . . . 6.01C

Issues in . . . 6.02B

## Other than solicitation of murder or solicitation of murder for hire

Definition . . . 6.01

Issues in . . . 6.02

**STALKING**

## Aggravated stalking

Bodily harm, confinement or restraint

Definition . . . 11.89

Issues . . . 11.90; 11.90X

Court order, violation of (See subhead: Court order, violation of)

## Bona fide labor dispute defined . . . 11.87B

## Court order, violation of

Definition . . . 11.91



[References are to sections.]

**STALKING—Cont.**

Court order, violation of—Cont.

Issues . . . 11.92; 11.92X

Definition . . . 11.87; 11.87X

“Follows another person” defined . . . 11.87A

Issues in . . . 11.88; 11.88X

“Places a person under surveillance” defined  
. . . 11.87C

Violation of court order (See subhead: Court order, violation of)

**STRANGLE**

Definition . . . 11.107A

**SUICIDE, INDUCEMENT TO COMMIT**

Attempted suicide . . . 11.79A

Coercing suicide

Defined . . . 11.79

Issues in . . . 11.80

Providing means or participating in physical act

Definition . . . 11.79X

Issues . . . 11.80X

**T****THEFT**

Commercial or written instrument, value of . . . 13.41

Computer fraud (See COMPUTER FRAUD)

Computer tampering (See COMPUTER TAMPERING)

Concealed merchandise

Definition . . . 13.45A

Inference arising from . . . 13.45

Control of property represented as stolen

Definition . . . 13.74

Issues in . . . 13.75

Deception defined . . . 13.33E

Deception of property exceeding \$500 in value

Definition . . . 13.17

Issues in . . . 13.18

Landlord, agent, employee of landlord, enhancing

factor based upon posing as . . . 13.17A; 13.18A

Deception of property having a \$500 or more value  
from a person exceeding 60 years of age

Definition . . . 13.19

Issues in . . . 13.20

Deception of property not exceeding \$500 in value

Definition . . . 13.15

Issues in . . . 13.16

Landlord, agent, employee of landlord, enhancing

factor based upon posing as . . . 13.15A; 13.16A

Deceptive practices

Definition . . . 13.37

Insufficient funds, inference arising from  
. . . 13.38A

Issues in . . . 13.38

Elderly or disabled person, financial exploitation of (See  
subhead: Financial exploitation of an elderly or disabled person)

Exclusive possession of recently stolen property, inference  
arising from . . . 13.34

Financial exploitation of an elderly or disabled person

Definition . . . 13.35

Disabled person defined . . . 13.35B

**THEFT—Cont.**

Financial exploitation of an elderly or disabled person—  
Cont.

Elderly person defined . . . 13.35A

Intimidation defined . . . 13.35C

Issues in . . . 13.36

Trust and confidence defined . . . 13.35D

Firearm, theft of

Definition . . . 13.07

Issues in . . . 13.08

Forgery (See FORGERY)

Governmental property defined . . . 13.33H

Home repair fraud (See HOME REPAIR FRAUD)

Identification document defined . . . 13.47A

Identity theft

Affirmative defense . . . 13.79

Aggravated identity

Definition . . . 13.77A

Issues in . . . 13.78A

Definition . . . 13.77

Issues in . . . 13.78

Insufficient funds, inference arising from . . . 13.38A

Insurance fraud (See INSURANCE FRAUD)

Labor, services or use of property, theft of

Definition . . . 13.27

Issues in . . . 13.28

Lost or mislaid property, theft of

Definition . . . 13.25

Issues in . . . 13.26

Misdemeanor theft

Obtaining control over stolen property

Definition . . . 13.23

Issues in . . . 13.24

Threat, by

Definition . . . 13.21

Issues in . . . 13.22

“Obtain” defined . . . 13.33C

Obtaining control over stolen property (misdemeanor)

Definition . . . 13.23

Issues in . . . 13.24

“Obtains or exerts control” defined . . . 13.33D

Owner defined . . . 13.33A

“Permanently deprive” defined . . . 13.33B

Person, theft from the

Definition . . . 13.09

Issues in . . . 13.10

Location, enhancing factors based upon

. . . 13.09A; 13.10A

Property defined . . . 13.33

Recently stolen property, inference arising from exclu-  
sive possession of . . . 13.34

Rented or leased personal property, theft of

Definition . . . 13.29

Issues in . . . 13.30

Retail theft (See RETAIL THEFT)

Stolen property defined . . . 13.33G

Subleasing of a motor vehicle, unlawful

Definition . . . 13.31

Issues in . . . 13.32

Subsequent theft offense

Definition . . . 13.05

Issues . . . 13.06

[References are to sections.]

**THEFT—Cont.**

## Threat, by (misdemeanor)

Definition . . . 13.21

Issues in . . . 13.22

## Threat defined . . . 13.33F

## Unauthorized control of property exceeding \$10,000 in value

Definition . . . 13.11

Issues in . . . 13.12

## Unauthorized control of property exceeding \$100,000 in value

Definition . . . 13.13

Issues in . . . 13.14

## Unauthorized control of property exceeding \$500 in value

Definition . . . 13.03

Issues . . . 13.04

Location, enhancing factors based upon  
. . . 13.03A; 13.04A

## Unauthorized control of property not exceeding \$500 in value

Definition . . . 13.01

Issues . . . 13.02

Location, enhancing factors based upon  
. . . 13.01A; 13.02A

## Unauthorized possession of an identification document

Definition . . . 13.47

Identification document defined . . . 13.47A

Issues in . . . 13.48

## Value, definitions of

Commercial or written instrument . . . 13.41

Damage . . . 13.41B

Theft, in . . . 13.41A

**TRAFFIC**

## Accidents

## Damage to vehicle, leaving the scene of an accident involving

Definition . . . 23.09

Issues in . . . 23.10

## Death or personal injury, leaving the scene of accident involving (See subhead: Death or personal injury, leaving the scene of accident involving)

Duty to give information or render aid defined  
. . . 23.11

## Actual physical control defined . . . 23.43

## Altered identification number, possession of vehicle with

Definition . . . 23.37

Identification number defined . . . 23.37A

Issues . . . 23.38

## Damage to vehicle, leaving the scene of accident involving

Definition . . . 23.09

Issues in . . . 23.10

## Death or personal injury, leaving the scene of accident involving

## Aggravated

Definition . . . 23.07

Issues in . . . 23.08

Definition . . . 23.05

Issues in . . . 23.06

Personal injury defined . . . 23.12

**TRAFFIC—Cont.**

## Drag racing

Definition . . . 23.33

Issues in . . . 23.34

## Driver's license suspended or revoked, driving while

Actual physical control defined . . . 23.43

Definition . . . 23.39

Issues in . . . 23.40

## Subsequent offense

Definition . . . 23.41

Issues in . . . 23.42

## Driving under the influence (See DRIVING UNDER THE INFLUENCE)

## Emergency vehicle (See subhead: Emergency vehicle, driving on approach to)

## Emergency vehicle, driving on approach to

Authorized emergency vehicle, definition of  
. . . 23.79X

Definition . . . 23.79

Issues . . . 23.80

## Fleeing or attempting to elude a police officer (See FLEEING OR ATTEMPTING TO ELUDE A POLICE OFFICER)

## Improper lane usage

Definition . . . 23.77

Issues in . . . 23.78

## Leaving the scene of accident involving death or personal injury (See subhead: Death or personal injury, leaving the scene of accident involving)

## Motor vehicle defined . . . 23.43b

## Radar detection devices, possession or use of

Definition . . . 23.73

"Equipped" defined . . . 23.73A

Issues in . . . 23.74

## Radar jamming devices, possession or use of

Definition . . . 23.75

Issues in . . . 23.76

## Reckless driving

## Aggravated

Definition . . . 23.31X

Issue in . . . 23.32X

Definition . . . 23.31

Issue in . . . 23.32

## Speeding

Definition . . . 23.65

Issues in . . . 23.66

"While passing school"

Definition . . . 23.65A

Issues in . . . 23.66A

## Stolen or converted vehicle, possession of

## Aggravated possession

Definition . . . 23.71

Issues in . . . 23.72

"Converted" defined . . . 23.35A

Definition . . . 23.35

Essential parts defined . . . 23.35B

Inference from . . . 23.36A

Issues in . . . 23.36

## Transportation of alcoholic liquor in motor vehicle

Definition . . . 23.67

Issues in . . . 23.68

## Vehicle defined . . . 23.43a

[References are to sections.]

**TRESPASS, CRIMINAL**

## Cemetery, to

Definition . . . 16.23

Issues in . . . 16.24

Damage, criminal (See **DAMAGE, CRIMINAL**)

## Interference with public institution of higher education

Definition . . . 16.19

Issues in . . . 16.20

## Real property, to

Definition . . . 16.11

Depart, notice to . . . 16.12A

Notice defined . . . 16.11A

Prior warning, issues in . . . 16.12

## Restricted areas at airports

Definition . . . 16.21

Issues in . . . 16.22

Landing areas, restricted or other restricted areas  
defined . . . 16.21A

Notice, definition of . . . 16.21B

## State supported land, to

Definition . . . 16.15

Depart, issues in notice to . . . 16.16A

Notice, definition of . . . 16.15A

Prior warning, issues in . . . 16.16

## Vehicle, to

Definition . . . 16.09

Issues in . . . 16.10

**U****UNBORN CHILD**Battery (See **BATTERY**, subhead: Unborn child, battery  
of)

Definition . . . 7.24

Homicide (See **HOMICIDE**, subhead: Unborn child)**V****VEHICULAR ENDANGERMENT**

## Child, endangering life or health of . . . 11.29A

Definition . . . 11.97

Highway defined . . . 11.97B

Issues in . . . 11.98

Object defined . . . 11.97A

Overpass defined . . . 11.97A

**VEHICULAR HIJACKING**

## Aggravated

Definition . . . 14.23

Issues in . . . 14.24

Definition . . . 14.21

Issues in . . . 14.22

**VEHICULAR INVASION**

Definition . . . 11.93

Issues in . . . 11.94

**VENUE INSTRUCTIONS**

Burden of proof . . . 2.07-2.07X

Issues in . . . 2.08-2.08X

**VERDICT FORMS**

Deadlocked jury supplemental instructions . . . 26.07

Death penalty . . . 26.06

**VERDICT FORMS—Cont.**

## Enhancement and extended term sentencing

Allegation not proven . . . 28.05

Allegation proven . . . 28.06

Guilty . . . 26.05

Insanity, not guilty by reason of . . . 26.03

Mentally ill, guilty but . . . 26.04

Not guilty . . . 26.02

**VOLUNTARY MANSLAUGHTER (See **HOMICIDE**)****W****WEAPONS**

## Aggravated battery

Definition . . . 11.117

Issues . . . 11.118

## Aggravated discharge of firearm

Person, building or vehicle, at

Definition . . . 18.11

Issues in . . . 18.12

Status of victim, enhancing factor based on

Definition . . . 18.13

Issues in . . . 18.14

## Aggravated unlawful use of weapons

Ballistic knife, possessing . . . 18.03U; 18.04U

Bludgeon, possessing . . . 18.03U; 18.04U

Bomb, possessing . . . 18.03W; 18.04W

Concealed weapon, possessing . . . 18.03W;  
18.04W

Location, enhancing factor based upon

Ballistic knife, possessing . . . 18.03U; 18.04U

Bludgeon, possessing . . . 18.03U; 18.04U

Bomb, possessing . . . 18.03X; 18.04X

Concealed weapon, possessing . . . 18.03W;  
18.04W

Identity, concealing one's . . . 18.03Y; 18.04Y

Machine gun, possessing . . . 18.03XX;  
18.04XX

Metal knuckles, possessing . . . 18.03U; 18.04U

Public way or land within city limits, possessing  
weapon on . . . 18.03Z; 18.04Z

Rifle, possessing . . . 18.03X; 18.04X

Shotgun, possessing . . . 18.03X; 18.04X

Silencer, possessing . . . 18.03; 18.04

Sling-shot, possessing . . . 18.03U; 18.04U

Switchblade, possessing . . . 18.03U; 18.04U

Tear gas or noxious liquid gas, possessing  
. . . 18.03V; 18.04V

Throwing star, possessing . . . 18.03U; 18.04U

Machine gun, possessing . . . 18.03XX; 18.04XX

Rifle, possessing . . . 18.03X; 18.04X

Shotgun, possessing . . . 18.03X; 18.04X

Silencer, possessing . . . 18.03; 18.04

Tear gas or noxious liquid gas, possessing  
. . . 18.03V; 18.04V

Throwing star, possessing . . . 18.03U; 18.04U

## Air rifle defined . . . 4.35

## Ballistic knife

Defined . . . 18.35

Possessing . . . 18.03U; 18.04U

Bomb, possessing . . . 18.03X; 18.04X

Cartridge defined . . . 18.35C



[References are to sections.]

**WEAPONS—Cont.**

- Cemetery, unlawful discharge of firearm in
  - Definition . . . 18.37
  - Issues in . . . 18.38
- Concealed weapon, possessing . . . 18.03W; 18.04W
- Courthouse defined . . . 18.35J
- Delivery to school or public housing premises, unlawful
  - Definition . . . 18.19
  - Issues in . . . 18.20
- Discharge of firearm in cemetery, unlawful
  - Definition . . . 18.37
  - Issues in . . . 18.38
- Exemptions to weapons offenses . . . 18.01A
- Explosive bullet defined . . . 18.35B
- Firearm defined . . . 18.35G
- Gunrunning
  - Definition . . . 18.43
  - Issues in . . . 18.44
- Handgun defined . . . 18.35I
- Identification card, failure to possess a firearm owner's
  - Definition . . . 18.25
  - Issues in . . . 18.26
- Identification marks of firearms, defacing
  - Definition . . . 18.23
  - Interference arising from possession of altered firearms . . . 18.24A
  - Issues in . . . 18.24
- Liquor licensee, unlawful sale of firearms by
  - Definition . . . 18.39
  - Issues in . . . 18.40
- Machine gun
  - Definition . . . 4.34; 18.35D
  - Possessing . . . 18.03XX; 18.04XX
- Metal piercing bullets, unlawful use of
  - Concealed metal piercing bullet and firearm
    - Definition . . . 18.33
    - Issues in . . . 18.34
  - Definition . . . 18.27
  - Discharge of, unlawful
    - Definition . . . 18.31
    - Issues in . . . 18.32
  - Issues in . . . 18.28
  - Manufacture, sale or transfer of bullets represented to be
    - Definition . . . 18.29
    - Issues in . . . 18.30
  - "Metal piercing bullet" defined . . . 18.35H
- Possession of, unlawful
  - Custody of Department of Corrections facilities, person in
    - Definition . . . 18.09
    - Issues in . . . 18.10
  - Felon, by
    - Definition . . . 18.07
    - Firearm defined . . . 18.07A
    - Issues in . . . 18.08

**WEAPONS—Cont.**

- Possession of, unlawful—Cont.
  - Firearms and firearm ammunition
    - Definition . . . 18.17
    - Issues in . . . 18.18
  - Reckless discharge of firearm
    - Definition . . . 18.41
    - Issues in . . . 18.42
  - Register of firearm sales, failure to keep by dealer
    - Definition . . . 18.21
    - Issues . . . 18.22
  - Rifle, possessing . . . 18.03X; 18.04X
  - Sale of firearms, unlawful
    - Aggravated unlawful sale, enhancement factor based on location
      - Definition . . . 18.15X
      - Issues in . . . 18.16X
    - Definition . . . 18.15
    - Issues in . . . 18.16
    - School or public housing premises; definition . . . 18.19
  - School defined . . . 18.35F
  - School or public housing premises, unlawful sale or delivery of
    - Definition . . . 18.19
    - Issues . . . 18.20
  - Shotgun, possessing . . . 18.03X; 18.04X
  - Silencer, possessing . . . 18.03; 18.04
  - Stun gun defined . . . 18.35E
  - Subsequent offense of unlawful use
    - Definition . . . 18.05
    - Issues in . . . 18.06
  - Switchblade
    - Defined . . . 18.35A
    - Possessing . . . 18.03U; 18.04U
  - Taser defined . . . 18.35E
  - Tear gas or noxious liquid gas, possessing . . . 18.03V; 18.04V
  - Unauthorized possession or storage of
    - Definition . . . 16.17
    - Issues in . . . 16.18
  - Unlawful use of
    - Aggravated (See subhead: Aggravated unlawful use of weapons)
      - Definition . . . 18.01
      - Exemptions to weapons offenses . . . 18.01A
      - Issues in . . . 18.02
      - Subsequent offense of
        - Definition . . . 18.05
        - Issues in . . . 18.06

**WEAPONS, UNAUTHORIZED POSSESSION OR STORAGE OF**

- Definition . . . 16.17
- Issues in . . . 16.17

**WITNESSES**

- Believability, jury sole witness of . . . 1.02









# MARGIN INDEX


To use, bend book in half and follow arrow to pages with black edges.




**Cannabis and  
Controlled  
Substances**



**Interference  
with  
Judicial  
and Other  
Governmental  
Functions**



**Enhancement/  
Extended Term  
Sentencing**




**Weapons**




**Traffic**



**Index**




**Mob Action**




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